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TELLING TALES IN SCHOOL: STORYTELLING FOR SELF-REFLECTION AND PEDAGOGICAL IMPROVEMENT IN CLINICAL LEGAL EDUCATION

JO A. TYLER & FAITH MULLEN*

In the past twenty years, there has been a surge in legal scholarship that recognizes the value of story in law, and law schools are beginning to tap into the extraordinary power of story. Largely absent from this mix are stories told by law students about their own experiences with the law. The authors used class time formerly devoted to clinic rounds to offer students the opportunity to tell stories about their cases outside the presence of their supervising attorneys. Clinical faculty then compared their own, recorded version of the story of a case with the student's version. This article explores how the integration of storytelling into law school clinics can help law students move through the six levels of cognition identified in Bloom's taxonomy of educational objectives in order to become more practice-ready, and how listening to student stories can help faculty deepen their understanding of students and cases. In addition to helping students develop insights into their casework, storytelling offered an opportunity to practice oral advocacy skills and to understand the role of story in case theory. Providing clinical faculty a formal opportunity to tell their own stories about student work on cases can deepen faculty members' understanding and inform their pedagogical approach.

INTRODUCTION

Stories are a critical means by which people navigate the tangled web of human experience. The point is not just a superficial one. Stories are instinctual. They are as central and important to our comprehension of the world as logic and science. Stories also help people organize and even recognize "facts" and preconceptions about reality.¹

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¹ Allan Kanner & Tibor L. Nagy, *Legal Strategy, Storytelling and Complex Litigation*,

The clinical portion of a law student's education is replete with stories of inquiry, surprise, success, failure, and frustration.² These stories are rich with implications for meaning making by students and faculty.³ The stories that emerge from interactions in a law school-based legal clinic may be told informally in hallway conversations, over coffee, over drinks at the bar, or they may not be told at all.⁴ Without a systematic way of leveraging these stories, it is likely that their pedagogical value is largely lost.⁵

This project represents an effort to capture some of that value and is a story in itself—an interdisciplinary story of the confluence of interests of two professors, both storytellers. Jo Tyler, a professor of behavioral sciences and education, brought a background in the role of stories and storytelling in a range of organizational settings. Faith Mullen, a professor in a law school-based legal clinic, was entrenched in day-to-day work with students and clients, and developed a great appreciation for the stories their work generated. As storytellers, both were keenly aware of stories and their latent potential.⁶ As educators, both were interested in ways to create a bridge from the clinical experience in higher education to post-commencement practice.⁷ They were intrigued by the potential of stories, and in particular storytelling, to foster analysis and synthesis that could enrich the clinical experience for both students and faculty.⁸

30 AM. J. TRIAL ADVOC. 1, 12-13 (2006).

² Nancy L. Cook, *Outside the Tradition: Literature as Legal Scholarship*, 63 U. CIN. L. REV. 95, 95 (1994) Cook observed more generally, "Whether acknowledged or not, the fact is, people express themselves and manage their lives in some measure through the telling of stories."

³ Steven L. Winter, *Legal Storytelling: The Cognitive Dimension of the Agony between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2230-31 (1989).

⁴ James R. Elkins, *On the Emergence of Narrative Jurisprudence: The Humanistic Perspective Finds a New Path*, 9 LEGAL STUD. F. 123, 143 (1985) (quoted in Cassandra Sharp, *The Extreme Makeover Effect of Law School: Students Being Transformed by Stories*, 12 TEX. WESLEYAN L. REV. 233, 242 (2005)). Elkins noted that the social aspect of storytelling is important: "Stories take on a social or collective dimension. They show how we are both distinctive and share something with others Stories define boundaries . . . and pull us together"

⁵ ROBERT H. FRANK, *THE ECONOMIC NATURALIST: IN SEARCH OF EXPLANATIONS FOR EVERYDAY ENIGMAS* 9 (2007). Robert Frank quoted Jerome Bruner's observation that children "turn things into stories, and when they try to make sense of their life they use the storied version of their experience as the basis for further reflection If they don't catch something in a narrative structure, it doesn't get remembered very well, and it doesn't seem to be accessible for further kinds of mulling over."

⁶ Kanner, *supra* note 1 (describing how stories shape our understanding of the world.)

⁷ See DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS* (1987). Schön's work focuses on the role of reflection in learning and in helping students develop into practitioners.

⁸ Ty Alper et al., *Stories Told and Untold: Lawyering Theory Analyses of the First*

This project began, as projects often do, with two professors telling each other stories about their work, in this case about the role of stories in their teaching. The two shared an instinctive curiosity about the value of storytelling for learning. Professor Mullen was interested in integrating storytelling into her classroom teaching and her work with students on cases. Professor Tyler was interested in how storytelling might play out in applied clinical educational settings where theory is actively integrated into practice. Professor Mullen's work in the legal clinic provided a perfect opportunity for an exploration of their combined interests. The two arranged for a meeting with Professor Mullen's clinical colleagues to discuss the possibilities.

As the project was conceived, students who enrolled in the General Practice Clinic at the Columbus School of Law of The Catholic University of America would be given the opportunity to tell the story of a case or client to their classmates, but outside the presence of their primary supervisors.⁹ With the students' permission, their stories would be videorecorded and then reviewed by their primary supervisor. Faculty members would also have a separate opportunity to tell and record their stories about the student work on cases and to compare student recordings with their own recordings.

To get a better sense of how this approach might work, and in preparation for the meeting with her colleagues, Professor Mullen identified a case that she and a student had experienced in different ways. With the student's full cooperation,¹⁰ Professor Tyler interviewed him and then separately interviewed Professor Mullen to collect two versions of the story. These versions were juxtaposed to highlight where they overlap and where they diverge. Professor Tyler

Rodney King Assault Trial, 12 CLINICAL L. REV. 1, 5-6 (2005). Stories play a key role in shaping our perception and understanding of the world. As Alper noted, "narrative is 'a primary and irreducible form of human comprehension,' humankind's basic tool for giving meaning to experience or observation - for understanding what is going on. It is the way most people make sense of the world most of the time. '[N]arrative . . . gives shape to things in the real world and often bestows on them a title to reality.' We link perceptions into happenings, happenings into events, events into stories; and our narrative expectations tell us how each story hangs together and how it will end. . . . Trial lawyers seeking to persuade jurors of a particular version of the facts need to tap into the process." (citations omitted).

⁹ Students enroll in the General Practice clinic for six credits, with an option, under certain circumstances, to continue for three to six more in subsequent semesters. They are expected to be present in the clinic for twenty hours per week. Students work in teams and represent two to five clients (depending on the scope or complexity of the cases) in civil matters including child support, special education, estate planning, consumer, and public benefit cases.

¹⁰ All of the students who shared their stories in this research were promised that their identities would remain confidential. Similarly, care was taken to obscure the identities of clients.

presented the following interwoven stories to Professor Mullen's clinic colleagues.

Supervisor:

The client, Mrs. Smith [not her real name], wanted a will drawn up, and a power of attorney, that sort of thing. From the outset, this student delayed doing anything. He said he wrote a letter, made a phone call, but the number was wrong. He didn't know what to do.

Student:

Well, I had problems right from the beginning. The file just wasn't complete. That was really my first major hurdle. I didn't have all the information. I had a phone number, but it was wrong. I tried to get the right phone number, but I couldn't. I didn't know what to do. Then I thought, "Well, I have her address." I thought, "If I go to see her, I can get this started." So I went to where she lived, and I introduced myself.

Supervisor:

Then, without consulting anyone, he decides to go, in person, alone, to the client's apartment. If he had told me that he was going to go to her apartment, especially alone, I would have advised him against it. They could have gone in a pair but his clinic partner was no longer really speaking to him. She was so frustrated. It could have been dangerous for him: he could have been harmed, or the client could have accused him of harming her, in the absence of witnesses

Student:

It was great. I drove to see her and she invited me in and we spent a long time chatting. I'm good with people and we got to know each other a little. I knew she wanted a will drawn up, and a power of attorney, and I knew there was a checklist of things that I had to cover. But, this was an important learning, you have to deal with the client's unresolved issues and work them through. She had grown children to consider. She had a significant other who she wanted to include, but he was married, and she had to think about the right way to do that. She wanted to create the will around these relationships, not just around some facts.

I had to understand what the relationships were from her perspective and then prepare the document to her wishes. The second time I went, I brought [my supervisor] with me. It was helpful to have her there with her perspective—someone who was married, who knew about all that. I wouldn't have been able to wrestle with all that on my own. That was good support.

Supervisor:

I went with the student to get the documents signed. We drove over there. Mrs. Smith lived in a pretty marginal part of town, and I was nervous about the neighborhood. We parked by some abandoned elementary school, traipsed past a couple of guys who watched us with great interest. I was even more nervous. When we finally make it to her building, we get through considerable security, hike up three flights, and Mrs. Smith meets us in the hall; she is obviously delighted to see him. They've clearly connected. And we aren't just there to do the formalities around signing a will. This is a big event. A bunch of neighbors came in as witnesses, and then she invited us to stay for lunch. She got out the china and the cloth napkins, and she made it a party.

Student:

So [my supervisor] and I went back again and I brought the prepared document and I went through all the clauses and answered the client's questions. And I could see that I was able to put into the right legalese an expression of what she wanted. It was pleasant.

You know, I grew up in a building with a wide range of folks, lots of different kinds of people of all ages and backgrounds. So working with the elderly, and sitting with them, talking, it was easy for me, and she wanted to have us over for lunch. Otherwise it would have just been cold. And I saw that it wasn't just about the legal stuff. She wanted to connect with somebody. The best scenario for her and me was to have a relationship that built up to the finished product.

[This case] tied things together for me. In the classes, you get the theory but all of sudden in the clinic you're dealing with real issues and real people. And I wondered about my ability with the theory, but I'm good with people. I *know* I'm good with people. Mrs. Smith let me know that she believed that I could be a good attorney, and that helped me to believe it too.

For Professor Mullen, several things were striking about comparing the stories. As she said in a follow-up interview with Professor Tyler, "without the opportunity to hear the student's story as told to [Professor Tyler], this would have been forever lodged in my brain as a story of student failure. I gained some insight into how complicated the student's life was, and how considerable his skills were. Hearing the student's story gave me an opportunity to consider what I had done, or left undone, that contributed to the result. And it gave me some hope that even the most resistant students—if they can figure out how to commence—can really do something. We need to be able to figure out early on what the impediments are. I wouldn't let a stu-

dent flounder in the same way for so long.”¹¹

These two stories were gathered after the fact, and Professor Mullen’s colleagues wondered what would have happened if these stories had been told as they happened during the semester. Answering that question became the focal point of this project.

The interest in capturing student and faculty stories was twofold. The first interest was to enrich student learning, driving it beyond practice and problem solving so that students could internalize their experience and make meaning from it.¹² The intent was to create opportunities for student storytelling that would broaden the students’ appreciation for the range of client stories they may encounter in the world beyond the clinic, and at the same time increase the students’ capacity for critical reflection and value-based introspection.¹³ The hope was that practicing storytelling would enhance their ability to deal with complexity and to make meaning out of their experiences that would inform the ways they engage with clients and the legal process when they graduate.¹⁴ The second interest was to explore the ways in which stories might influence the pedagogical processes of the clinic.

To address these two interests, the authors designed an action research project, which is the subject of this article. Action research is a particular form of qualitative research grounded in the work of Kurt Lewin,¹⁵ who “preferred to consider the entire system in its natural environment”¹⁶ rather than to examine a single variable in isolation. This philosophy leads to a research design that takes place in the setting where the problem to be solved or the phenomenon to be studied exists. This allows the research to be integrated with the work naturally undertaken by the members of the organization, rather than being something artificially separate from their priorities. Action research consists of a cyclic process of action and reflection in which

¹¹ Transcript of recorded interview (on file with authors).

¹² See S.D. BROOKFIELD & S. PRESKILL, DISCUSSION AS A WAY OF TEACHING: TOOLS AND TECHNIQUES FOR DEMOCRATIC CLASSROOMS, (1st ed. 1999) [hereinafter DEMOCRATIC CLASSROOMS]. Brookfield and Preskill stress the importance of voicing student experiences in classroom environments as a way to socialize the learning process.

¹³ See SCHÖN, *supra* note 7.

¹⁴ See WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 87-125 (2007) [hereinafter EDUCATING LAWYERS].

¹⁵ See Kurt Lewin, *Action Research and Minority Problems*, 2 J. SOC. ISSUES 34 (1946). Levin’s work laid the foundation for action research as a way of understanding unfolding phenomena.

¹⁶ See Victoria J. Marsick & Martha A. Gephart, *Action Research: Building the Capacity for Learning and Change*, 26 HUMAN RESOURCE PLANNING 2, 14 (2003). This seminal article describes how action research is informed by theory but refined by information gathered during the research process.

people learn from their experiences, thereby integrating learning into the research process.¹⁷ Action research was a useful inquiry method for this project, given the focus on storytelling as a reflective process of narrating an individual's experiences, and the emphasis on fostering higher orders of cognition as the students move from practical application and analysis to synthesis and evaluation.¹⁸

This article recounts how the project developed and the considerable value of storytelling for both students and faculty. Part I examines the theoretical framework and related literature supporting the design of the project. Drawing on the literature from adult learning and higher education, storytelling, and storytelling in law, the authors explain why storytelling is such a useful mechanism for self-reflection and heightened insight for both students and faculty. This part also describes the value of using qualitative research in examining the use of story to improve performance. Part II of the article lays out the purpose of the project and the research questions that drove it. Part III provides the research plan and background on the methods associated with action research. Part IV reveals how the action research plan evolved. It details a systematic process of integrating storytelling into a clinic's curriculum, carving out time for both students and faculty to share their stories in a way that adds value but does not disrupt the clinical process. Part V reports the findings, and Part VI concludes with a discussion of implications for clinical education and recommendations for future research.

I. THEORETICAL FRAMEWORK AND SELECTED LITERATURE

The central framework for this project includes three bodies of literature: adult learning and higher education, storytelling, and storytelling in law. The relevance of each body of literature is discussed briefly in this section. These are set against a backdrop of the tradition of qualitative research, and action research in particular.¹⁹

A. Adult Learning And Higher Education

The students and faculty who stand to be affected by the storytelling process are all adults on a learning journey, and storytelling is a tool that can enhance their learning.²⁰ The literature of adult learning

¹⁷ See *id.*

¹⁸ See BENJAMIN S. BLOOM ET AL., *TAXONOMY OF EDUCATIONAL OBJECTIVES, HANDBOOK I: THE COGNITIVE DOMAIN* (1956). Bloom is credited with noticing that cognition advances in stages of development from the concrete to the abstract.

¹⁹ Marsick & Gephart, *supra* note 16.

²⁰ Nancy Levit, *Legal Storytelling: The Theory and the Practice - Reflective Writing Across the Curriculum*, 15 *LEGAL WRITING: J. Legal Writing Inst.* 253, 276-77 (2009) ("Stories are the way humans learn best. Research is emerging in cognitive neuroscience that

is an important source of insight. To begin, the clinic structure is based in part on andragogical (rather than pedagogical) principles,²¹ which minimize the role of the teacher as imparter of knowledge and emphasize reliance on experience and the immediacy of application of learned content.²²

Clinical programs in higher education represent an effort to bridge the classroom and the workplace.²³ These programs direct their goals at achieving the top end of straightforward educational taxonomies, such as Bloom's contribution.²⁴ Bloom's taxonomy of educational objectives includes six levels of cognition with respect to elements such as ideas, constructs, materials, and solutions.²⁵ At the base of the taxonomy is knowledge, with an emphasis on memorization, and comprehension, the ability to know what is being communicated, and how to respond to it. The second level, comprehension, in turn leads into the third level, application, where abstractions are put into use to solve problems without prompting. The fourth level is analysis, in which relationships and directionality of the elements, content, and form of ideas and action surface, leading to an understanding of underlying principles. The fifth level of synthesis combines the elements into an integrated and original pattern that did not exist prior to synthesis. Finally, at the top of the taxonomy is evaluation, in which thoughtful judgments are made regarding the value of the elements based on criteria or standards including accuracy, efficacy, and logic.²⁶ Successful synthesis can then act as a prelude to the acquisition of new knowledge, a return to the base of the taxonomy.²⁷

Moving beyond the lower levels of cognition typically addressed in traditional classroom education (knowledge and comprehension), clinical education allows for application and response, and stretches into the most sophisticated arenas of analysis and problem solving,

'[t]he brain is structured, or 'wired,' to detect patterns' and that stories are a better way than simply the conveyance of facts to 'encourage . . . the recognition of new patterns and relationships among objects and ideas.'") (citations omitted).

²¹ See DAVID F. CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS* (2002).

²² See M.S. KNOWLES et al., *ANDRAGOGY IN ACTION: APPLYING MODERN PRINCIPLES OF ADULT EDUCATION* (1984). Adults come into a learning environment with a reservoir of experience that children lack. Another principle of andragogy is that adult learners learn with an intention of immediate and practical use, while children are taught with an expectation of application at some distant time.

²³ See *EDUCATING LAWYERS*, *supra* note 14.

²⁴ See BLOOM, *supra* note 18.

²⁵ See Michael Josephson, *Learning and Evaluation in Law School: Principles of Testing and Grading Learning Theory Instructional Objectives*, Ass'n of Am. Law Sch. Annual Meeting (San Francisco, Ca. 1984) 47-53 (applying Bloom's taxonomy to legal education.).

²⁶ See BLOOM, *supra* note 18.

²⁷ See BLOOM, *supra* note 18.

synthesis and internalization, and, if the program is particularly successful, into evaluation and meaning making. These latter two areas of synthesis and evaluation are important to integrating learning into later practice.²⁸ Clinical education that supports students all the way through meaning making connected to their clinical experience will hold them in good stead long after they leave the program.²⁹

The work of Albert Bandura offers insight into the understanding of storytelling as a social phenomenon affiliated with adult learning.³⁰ Bandura's discussions of observational learning and modeling and of the diffusion of innovation are particularly relevant to this project.³¹ One foundation of social learning theory is the idea that learning can occur in ways other than through actual practice and selective reinforcement, which would be time consuming.³² Bandura posits that learners do not need to see every action undertaken by a model in order to process it or to reflect on its implications relative to their own context.³³ As a substitute, the learner can process symbolic models. Stories, therefore, may be an ideal medium for cognitively playing out alternative courses of action and endings.³⁴ The stories told in the clinical setting can be channels for the synthesis and reflection associated with critical thinking and learning.³⁵ Telling stories allows listeners to learn situationally through what Bandura refers to as symbolic observation, the symbols in this case being language and, in particular, narrative renditions of experience.³⁶ In addition, this listening is followed up by dialogue, and often by the listeners' own storytelling. The dialogue is an extension of reflection and synthesis. The telling is an opportunity for the listener to model new storytelling ideas and behaviors.³⁷ More importantly, when the listening and telling are followed by contact with clients, students can incorporate ideas from the

²⁸ See ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

²⁹ *EDUCATING LAWYERS*, *supra* note 14.

³⁰ See ALBERT BANDURA, *SOCIAL FOUNDATIONS OF THOUGHT AND ACTION: A SOCIAL COGNITIVE THEORY* (1986). Although Bandura's work began with an interest in how children learn, he demonstrated a link between his social cognitive theory and adult learning.

³¹ *See id.*

³² *See id.*

³³ *See id.*

³⁴ *See id.*

³⁵ See STEPHEN D. BROOKFIELD, *DEVELOPING CRITICAL THINKERS: CHALLENGING ADULTS TO EXPLORE ALTERNATIVE WAYS OF THINKING AND ACTING* (1987). Brookfield examined the development of critical thinking from the perspectives of both the learner and the educator. He encourages adult learners to reflect on their underlying assumptions and consider other ways of thinking. Telling and listening to stories is one way to do this.

³⁶ *See* BANDURA, *supra* note 30.

³⁷ *See* BANDURA, *supra* note 30.

stories of others into their own approaches to their practice. This incorporation of ideas relates directly to Bandura's notions regarding the diffusion of innovation between people and communities, where new patterns of innovation can emerge from the "observation" (in this case by listening) of diverse models.³⁸ Bandura contends that rather than patterning behaviors on a single source, learners combine various dimensions of diverse models into tailored innovation. This project was designed to expose learners to multiple stories.³⁹

Bandura's social learning theory connects to ideas regarding "communities of practice" made popular by Etienne Wenger.⁴⁰ Wenger posits that stories are the very fiber of communities of practice, the stuff that creates them, holds them together, and provides them with identity and boundary. At the same time, stories are also a product of communities of practice, a product useful for knowledge transfer both within and between communities.⁴¹ The students in the clinic form a clear and highly bonded, if temporary, community of practice, one naturally brimming with stories already told informally. The systematic approach to storytelling makes the stories more concrete, embedding them in the psychosocial fabric of the community and further coalescing the community of practice.⁴² Stories from outgoing students may be useful for incoming students to hear.⁴³ This knowledge transfer between communities of practice may be an additional leverage point for the learning power of stories.

Also connected to Bandura's social learning practice is the notion of learning as a reflective and dialogic process.⁴⁴ These two attributes are inherent in storytelling sessions designed to include interaction following the telling of the story. They are detailed in Stephen Brook-

³⁸ See BANDURA, *supra* note 30.

³⁹ Philip N. Meyer, *Will You Please Be Quiet, Please? Lawyers Listening to the Call of Stories*, 18 VT. L. REV. 567, 570-71 (1994) ("Our communities are multivocal. The law, however, speaks univocally, and systematically excludes the voices and stories of those who ought to be included in the community of authoritative speech. The study of stories provides models for a legal discourse that can achieve a multivocal community.").

⁴⁰ See ETIENNE WENGER, *COMMUNITIES OF PRACTICE: LEARNING, MEANING AND IDENTITY* (1998). According to Wenger, communities of practice naturally evolve in the context of shared interest and shared stories and in turn result in the production of new stories.

⁴¹ Roberta Rosenthal Kwall, "Author-Stories:" *Narrative's Implications for Moral Rights and Copyright's Joint Authorship Doctrine*, 75 S. CAL. L. REV. 1, 8 (2001). Kwall described the value of story in knowledge transfer when she wrote, "People are best able to synthesize information and make informed decisions when they have a context to provide a framework for their thought processes. Stories, to the extent they provide this context, are a particularly valuable form of information transmission."

⁴² EDUCATING LAWYERS, *supra* note 14, at 353. The report underscores the importance of "peer groups and a practice-based imitation" to professional identity formation.

⁴³ Kwall, *supra* note 41, at 8-9.

⁴⁴ BANDURA, *supra* note 30.

field's work on critical thinking⁴⁵ and in his work with Stephen Preskill, which focuses on the creation of settings that encourage both freewheeling and systematic approaches to story-based learning.⁴⁶ They suggest, "One useful way to encourage students in professional courses to reflect critically on their field is to use the 'tales from the trenches'. . . [where] students recount their dismay at the gap between theory and practice, between the training laboratory and real life."⁴⁷ The work of Jack Mezirow⁴⁸ and Patricia Cranton⁴⁹ also supports the use of storytelling as a means of establishing ideal conditions for learning.⁵⁰ The reflective and discursive nature of story-crafting, storytelling, and story-listening can lead individual learners to the disorienting dilemmas or triggering events that stimulate critical thinking.⁵¹ These triggering events, in which previously held assumptions are challenged by the presentation of contrary information or in which information emerges in unexpected ways, ignite reflection and lie at the heart of the transformative learning process.

Any discussion of the value of story in higher education would be incomplete without a discussion of the ethical implications of doing research with students.⁵² As Brockett points out, there can be "potentially detrimental consequences of facilitator intervention" that must be attended to, especially when introducing "nontraditional approaches."⁵³ The power dynamic between faculty and students is qualitatively different in the clinic than in the traditional classroom-based curriculum that constitutes the majority of the law student's experience. Nevertheless, it exists.⁵⁴ Even with no faculty members present

⁴⁵ See BROOKFIELD, *supra* note 35.

⁴⁶ See DEMOCRATIC CLASSROOMS, *supra* note 12.

⁴⁷ See DEMOCRATIC CLASSROOMS, *supra* note 12.

⁴⁸ See JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING (1991). Mezirow is considered the father of transformative learning theory. He identified nine ideal conditions for rational discourse.

⁴⁹ See PATRICIA CRANTON, UNDERSTANDING AND PROMOTING TRANSFORMATIVE LEARNING: A GUIDE FOR EDUCATORS OF ADULTS (1994). Cranton interprets and extends Mezirow's work into non-rational domains that include linguistic and artistic expression.

⁵⁰ J.A. Tyler, *Charting the Course: How Storytelling Can Foster Communicative Learning in the Workplace*, in TRANSFORMATIVE LEARNING IN PRACTICE: INSIGHTS FROM COMMUNITY, WORKPLACE, AND HIGHER EDUCATION 136 (J. Mezirow & E.W. Taylor eds., 2009).

⁵¹ See CRANTON, *supra* note 49, at 77.

⁵² See ETHICAL ISSUES IN ADULT EDUCATION (R.G. Brockett ed., 1988). Brockett's work informs this project, particularly with respect to the important issues of confidentiality and power.

⁵³ *Id.* at 5.

⁵⁴ Jennifer P. Lyman, *Getting Personal in Supervision: Looking for that Fine Line*, 2 Clinical L. Rev. 211, 221 (1995) ("[v]irtually every request we make of students has coercive potential. This potential lies in the power imbalance between teacher and student, and more particularly, in students' perception of the teacher's greater power.").

in the room, students are aware that their stories are being archived for later viewing, and they are not likely to reveal information that may be damaging to their grade or personally embarrassing. On the other hand, their ability to derive high quality, constructive feedback from the listeners is hampered if key elements are left out of the story. The challenge of creating a safe and liberating space for storytelling disassociated from grades, in the context of a grade-based power dynamic, was fundamental to this project.

B. Storytelling

Storytelling lies at the heart of this project. In general, the literature on storytelling, outside the legal context, lacks high quality studies grounded in careful research. General texts on story construction and performance are nonetheless a useful backdrop for understanding the basics of storytelling.⁵⁵ These provide useful insight into story structure and techniques that improve delivery and facilitate connection with listeners. In the realm beyond technique, Carol L. Birch wrestles with contemporary issues of storytelling, including some of the ethical considerations around power dynamics and story ownership that are especially relevant to decisions students in the clinic may make in determining how to craft a story that best portrays their clients.⁵⁶

Of particular interest in the context of this project is David Boje's concept of antenarrative.⁵⁷ Boje, in his work on storytelling in organizational contexts, makes a distinction between meta-narrative—in this case the law—and antenarrative, which are the smaller or micro-stories of individuals who attempt to navigate that narrative. Boje "give[s] 'antenarrative' a double meaning: as being before and as a bet."⁵⁸ This form of storytelling offers a way of narrating the story while it is still unfolding and is speculative regarding the direction where the story is heading. Antenarratives come "before" the story is entirely coherent, neatly plotted, and practiced. These micro antenarratives (as opposed to the meta-narrative of the law) are precisely the

⁵⁵ See DOUG LIPMAN, *IMPROVING YOUR STORYTELLING: BEYOND THE BASICS FOR ALL WHO TELL STORIES IN WORK OR PLAY* (1999). See also JACK MAGUIRE, *THE POWER OF PERSONAL STORYTELLING: SPINNING TALES TO CONNECT WITH OTHERS* (1998); BILL MOONEY & DAVID HOLT, *THE STORYTELLER'S GUIDE* (1996); NORMA J. LIVO & SANDRA A. RIETZ, *STORYTELLING: PROCESS AND PRACTICE* (1986).

⁵⁶ *WHO SAYS? ESSAYS ON PIVOTAL ISSUES IN CONTEMPORARY STORYTELLING* (Carol L. Birch and Melissa A. Heckler eds., 1996).

⁵⁷ See DAVID BOJE, *NARRATIVE METHODS FOR ORGANIZATIONAL AND COMMUNICATION RESEARCH* (2001). Boje's concept of antenarrative explores the complexity of unfinished, unmerged storytelling, which is the hallmark of storytelling in this project.

⁵⁸ *Id.* at 1.

stories that can help a student make sense of a client's experiences and make meaning of the student's own relationship with the client, thereby assisting the student's movement toward the higher levels in Bloom's taxonomy of synthesis and evaluation. Absent the traditional beginning-middle-end structure that typifies stories in the Western tradition of folktales, students may struggle to tell these antenarratives that morph even in their telling.⁵⁹ These stories, full of complexity, contradiction, and looping-back, parallel the often complicated and multi-layered, multi-directional experiences of clients who come to the clinic. The effort to tell these stories has the potential to connect students more closely to the world of their clients and to deepen their insight into the nuances of the cases.

C. *Storytelling In Law*

In the past twenty years, there has been a surge in legal scholarship that expanded the use of story in law.⁶⁰ "Legal theorists began to recognize what historians and practicing lawyers had long known and what cognitive psychologists were just discovering—the extraordinary power of stories."⁶¹ This expansion has taken many forms:⁶² There are

⁵⁹ Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey*, 29 SEATTLE U. L. REV. 767, 768-69 (2006) (underscoring the value of framing client stories along traditional lines when she wrote, "Because people respond—instinctively and intuitively—to certain recurring story patterns and character archetypes, lawyers should systematically and deliberately integrate into their storytelling the larger picture of their clients' goals by subtly portraying their individual clients as heroes on a particular life path. This strategy is not merely a device to make the story more interesting, but provides a scaffold to influence the judge at the unconscious level by providing a metaphor for universal themes of struggle and growth. Folklore and mythology are already part of the doctrine in other disciplines that rely on persuasive techniques, such as screenplays, political campaigning, and advertising. These disciplines have absorbed the lessons of heroic archetypes because we respond viscerally to certain story patterns unconsciously.").

⁶⁰ See *Applied Legal Storytelling Conference, Chapter Three: Trail Blazing on the Great Divide*, University of Denver, Sturm College of Law, (July 8, 2011); *Applied Legal Storytelling Conference, Chapter Two: Once Upon a Legal Story*, Lewis & Clark Law School (July 22, 2009); *Applied Storytelling in Law*, City University Inns of Court Law School (July 20, 2007); Peter Brooks, *Narrative Transactions – Does the Law Need a Narratology?* 18 YALE J.L. & HUMAN. 1 (Winter 2006); Richard Posner, *Legal Narratology*, 64 U. CHI. L. REV. 737 (1997); Symposium, *Lawyers As Storytellers & Storytellers As Lawyers: An Interdisciplinary Symposium Exploring the Use of Storytelling in the Practice of Law*, 18 VT. L. REV. 565 (1994); Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989); Symposium, *The Power of Stories: Intersections of Law, Literature, and Culture Case Stories*, 12 TEX. WESLEYAN L. REV. 233; Symposium, *Law and Literature*, 39 MERCER L. REV. 739 (1988); Symposium, *Law and Literature*, 60 TEXAS L. REV. 373 (1982).

⁶¹ Nancy Levit & Allen Rostron, *Law Stories: Tales from Legal Practice, Experience, and Education*, 75 UMKC L. REV. 1127, 1128 (2007).

⁶² See Carrie Menkel-Meadow, *Forward. Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 FORDHAM L. REV. 787, 815-16 n.6 (2000) (offering a detailed catalogue of a number of uses of stories in law, including the "use of stories, both

law review articles where the authors tell the story of their personal experience of injustice (often with roots in feminist legal theory or race theory),⁶³ and there are law review articles that respond to these stories.⁶⁴ While there have long been books and articles that tell the stories of famous cases⁶⁵ or famous lawyers,⁶⁶ more recently legal scholars have used storytelling as way to make law come alive for students.⁶⁷ There is a series of books designed to tell the story behind landmark cases.⁶⁸ There is also large body of scholarship around literature in law,⁶⁹ including reservations about its use.⁷⁰ There are law review articles about client stories,⁷¹ the ethics of telling client stories,⁷² and even about the ethics of telling stories to clients.⁷³ There is a growing interest and acceptance in the role of story in law, beyond

real and fictionalized, to illustrate legal practice ethical dilemmas"; "slightly fictionalized versions. . . of life in the large modern law firm"; accounts by prosecutors and defense attorneys; stories of the first year in law school; accounts of a single case; and biographies and autobiographies of "famous and infamous lawyers and judges.").

⁶³ See Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229, 1234 n.12 (1995).

⁶⁴ See Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); Brooks, *supra* note 60.

⁶⁵ See, e.g., ANTHONY LEWIS, *GIDEON'S TRUMPET* (Vintage Books ed. 1989); TRUMAN CAPOTE, *IN COLD BLOOD* (1965); SEBASTIAN JUNGER, *THE PERFECT STORM: A TRUE STORY OF MEN AGAINST THE SEA*, (W.W. Norton & Co. 2009)(1997); RICHARD L. RASHKE, *THE KILLING OF KAREN SILKWOOD: THE STORY BEHIND THE KERR-McGEE PLUTONIUM CASE* (2d ed. Cornell University Press 2000).

⁶⁶ See, e.g., GERRY SPENCE, *GUNNING FOR JUSTICE* (1982). See also Johnny Cochran & David Fisher, *A LAWYERS LIFE* (2002); MELVIN BELLI & ROBERT BLAIR KAISER, *MY LIFE ON TRIAL: AN AUTOBIOGRAPHY* (2d ed. William Morrow & Co. 1976).

⁶⁷ See Michael A. Mogill, *Dialing for Discourse: The Search for the 'Ever After,'* 36 WILLAMETTE L. REV. 1 (2000) (using the stories behind the cases to make the cases come alive for students, Mogill follows up with parties and their counsel to give students the rest of the story.)

⁶⁸ See Paul L. Caron, *Back to the Future: Teaching Law Through Stories*, 71 U. CIN. L. REV. 405 (2002) (describing how these texts can be used to enhance the study of foundational cases in different subjects.).

⁶⁹ See Nancy L. Cook, *Outside the Tradition: Literature as Legal Scholarship*, 63 U. CIN. L. REV. 95, 96 (1994) ("[W]hile it may not be common practice, it now appears to be acceptable to expose students to literary works in classes other than those designed explicitly to cover such works.").

⁷⁰ See, e.g., Christine Metteer Lorillard, *Stories That Make the Law Free: Literature As A Bridge Between the Law and the Culture In Which It Must Exist*, 12 TEX. WESLEYAN L. REV. 251, 253 (2005) (citing Robin L. West, *Adjudication is Not Interpretation: Some Reservations About the Law-as-Literature Movement*, 54 TENN. L. REV. 203, 203-04 (1989)).

⁷¹ See Clark D. Cunningham, *A Tale of Two Clients: Thinking about Law As Language*, 87 MICH. L. REV. 2459 (1989).

⁷² Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 53 (2000) (arguing for developing "an ethics of narrative that respects client stories beyond the confines of confidentiality.").

⁷³ Steven J. Johansen, *This Is Not The Whole Truth: The Ethics Of Telling Stories To Clients*, 38 ARIZ. ST. L.J. 961, 982 (2006).

trial practice.⁷⁴ As Nancy Levit observed, “[s]torytelling has become firmly entrenched not only in jurisprudence, but more fundamentally in the ways we think about teaching and practicing law.”⁷⁵

Various authors have organized the myriad uses of story and storytelling in law into subcategories, each author sorting them along different lines.⁷⁶ Jane Barron identified three ways stories are used in law: “the use of stories in legal settings (like law offices and courtrooms) to enhance communication, personal stories of actual people, and the stories that legal doctrines tell about the world, its problems, and its potential.”⁷⁷ Nancy Levit and Allen Rostron identified three “strands”: law in literature, law as literature, and storytelling.⁷⁸ Toni M. Massaro suggests there are “stories that bridge, providing connections between people of different experience, stories that explode . . . certain ways of thinking, stories that mask, devalue, or suppress other stories, stories that consolidate, validate, heal and fortify. . . , and even stories that maim . . . and so should not be told at all.”⁷⁹

What is largely absent from this mix are stories told by law students about their own experiences with the law.⁸⁰ Robert Dinerstein observed, “While many of our current discussions about clinical scholarship decry the absence (or appropriation) of client voice in clinical scholarship, students may be even more invisible in our writing and at our conferences.”⁸¹ Outside the personal essay submitted as part of their law school application, students are rarely asked to tell stories that matter to them.⁸² Additionally, there are surprisingly few ac-

⁷⁴ Menkel-Meadow, *supra* note 62, at 816 (“[T]he kinds of stories we can tell are now enormously rich and various and the methods of storytelling and case studies we can use are increasingly diverse and ever more vivid.”).

⁷⁵ Levit, *supra* note 20, at 259.

⁷⁶ Meyer, *supra* note 39, at 569-71. Meyer identifies three strands of storytelling in law. First, hermeneutics, where “the study of fiction may yield rules of interpretation that may profitably be used in writing and understanding constitutions, statutes, and judicial opinions;” second, homiletics where we “listen to stories because listening ‘helps us understand others . . . and makes us more moral;’” and constitutive rhetoric, which includes the voices of those who are too often excluded. Meyer’s third strand is lawyering theory, which examines stories “from a multitude of perspectives: cultural anthropology, cognitive theory, narrative theory, sociology, film theory, theater, semeiotics, and linguistics.”

⁷⁷ Lorillard, *supra* note 70 (citing Jane B. Barron, *The Many Promises of Storytelling*, 23 *RUTGERS L. J.* 79, 80-81 (1991) (reviewing *NARRATIVE AND LEGAL DISCOURSE: A READER IN STORYTELLING AND THE LAW* (David R. Papke ed., 1991)).

⁷⁸ Levit, *supra* note 20.

⁷⁹ Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 *MICH. L. REV.* 2099, 2104 (1989).

⁸⁰ Robert D. Dinerstein, *Clinical Education in a Different Voice: A Reply to Robert Rader*, 1 *CLINICAL L. REV.* 711, 711 n.2 (1995) (observing that students “seem curiously absent from some of the most important conversations between . . . the lawyer/supervisor, and the client.”).

⁸¹ *Id.*

⁸² Michael A. Mogill, *Our Students, Our Selves: The Mirror Reflects Back*, 32 *CAP. U.*

counts of students as storytellers.⁸³ One notable exception is the practice of inviting students to share their experiences in journals.⁸⁴

It is important to distinguish the use of story in this project from the use of story in other legal scholarship: the stories that are recounted here do not purport to tell an objective truth;⁸⁵ they are not told to persuade or to provoke. Instead, they are valuable because the process of crafting and telling a story helps students to better understand what they have experienced, and listening to a student's story, particularly when juxtaposed with the professor's own story, may offer insights about the student, the case, the client, and the professor's own assumptions. In asking students to tell stories, the authors were primarily interested in giving the students the opportunity to consider what is the "most important thing" about their experience of a case, to shape those impressions into a story, and to experience telling that story to a group of attentive listeners. Story is important to understanding. As James Elkins observed,

Story is one way that we deal with our experience and understanding of the world and ourselves in the world. And we can actively engage in our own experience—in which case we become the teller of stories, our own or the stories of others . . . We find out who we are as persons by the story we tell, by the conversations we have with others, the way we imagine ourselves, and the way we are able

L. REV. 317, 319 (2003) (citations omitted) ("Perhaps it is our own shortcoming as teachers that has led us to fail to note an invaluable resource to the learning process—our very own students. Through years of service on our Admissions Committee, my colleagues and I have perused the personal statements of applicants, going beyond the mere numbers provided by LSAT scores and GPAs to select students whose vocational, experiential, and academic backgrounds will add to a more diversified and enlightened class of matriculants. But once the students arrive and settle in our seating charts, many of us have failed to use this very human resource as an aid in the learning process.").

⁸³ See Cassandra Sharp, *The Extreme Makeover Effect of Law School: Students Being Transformed by Stories*, 12 TEX. WESLEYAN L. REV. 233, 234 (2005) (examining the effect of legal stories in popular culture on transforming identity of first year law students in Australia by exploring the world of law as portrayed in then popular television shows (Boston Legal, Judging Amy, JAG and Law and Order)). See also Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLIN. L. REV. 167 (1995) (recounting her experiences as a student in a clinical program and its effect on her professional identity.); Robert Rader, *Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Criminal Defendants*, 1 CLIN. L. REV. 299 (1994) (recounting the experiences of a former law student in a criminal defense clinic).

⁸⁴ See Elizabeth M. Schneider, *Law Stories: Tales from Legal Practice, Experience, and Education* 76 UMKC L. REV. 839 (2008); See also J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55, 61 (1996); James R. Elkins, *The Quest for Meaning: Narrative Accounts of Legal Education*, 38 J. Legal Educ. 577 (1988). These articles extol the benefits of inviting students to share their experiences in personal journals in lawyering skills, externship, and some doctrinal classes.

⁸⁵ See Johansen, *supra* note 73.

to understand and reflect on the way our lives unfold.⁸⁶

D. Qualitative And Action Research

In addition to the literature discussed above, this project also relies heavily on the literature on qualitative research with respect to research design, execution, analysis, and reporting.⁸⁷ Catherine Marshall and Gretchen Rossman provide the basic backdrop for the choice of methods and general research design.⁸⁸ Qualitative methods prevail when researchers place an emphasis on being able to “better understand—and perhaps change—a complex social phenomenon.”⁸⁹ In particular, action research, the process undertaken in this project, is common to higher education settings, and “seeks to ‘decentralize’ traditional research by maintaining a commitment to local contexts rather than to the quest for Truth and to liberate research from its excessive reliance on conventional rules” grounded in positivist research.⁹⁰

In terms of data gathering, semi-structured interviews between rounds of storytelling were the primary channel for gaining insight. Interviews were chosen because they are a well established, “systematic form of questioning”⁹¹ that prompts the individuals “being interviewed to respond in their own words to express their own personal experiences.”⁹² The semi-structured interview guides focused “on a particular subject that has been predetermined,”⁹³ in this case the experience of telling a story about work on a case, but left sufficient freedom to ask questions to illuminate the student experience of storytelling in the context of the clinical work.⁹⁴ In addition to more traditional open-ended interview questions with sub-prompts, the interview protocols also incorporated the Critical Incident Interviewing Technique (CIIT), a process of eliciting rich data in a story form. This technique was originated by John Flanagan in his seminal work with

⁸⁶ Elkins, *supra* note 4, at 141.

⁸⁷ See HANDBOOK OF QUALITATIVE RESEARCH (N.K. Denzin & Y.S. Lincoln eds., 1994).

⁸⁸ See CATHERINE MARSHALL & GRETCHEN ROSSMAN, DESIGNING QUALITATIVE RESEARCH (3d ed. 1999). This seminal work is a recognized authority on all aspects of qualitative research, including the action research approach applied in this project.

⁸⁹ *Id.* at 2.

⁹⁰ *Id.*

⁹¹ See STEINAR KVALE, INTERVIEWS: AN INTRODUCTION TO QUALITATIVE RESEARCH INTERVIEWING 132 (1996). Interviewing is another realm where the potential power dynamics require careful planning.

⁹² See MICHAEL Q. PATTON, QUALITATIVE EVALUATION AND RESEARCH METHODS (2d ed.1980).

⁹³ *Id.*

⁹⁴ KVALE, *supra* note 91.

the military.⁹⁵ The "critical incident technique is essentially a procedure for gathering certain important facts concerning behavior in defined situations."⁹⁶ Finally, the process of "constant comparison" of the data as the research proceeded informed the authors' practical decisions and provided the basis for drawing out themes from the interview data.⁹⁷

II. RESEARCH PURPOSE AND KEY QUESTIONS

The primary purpose of this action research process was to develop an understanding of the effect that systematic inclusion of storytelling has on the students in a law school-based legal services clinic. The research also considered whether the inclusion of storytelling has any potential implications for approaches to the pedagogical processes in the clinic. The research addressed the following questions:

1. In what ways, if any, does the storytelling process—focused on students' own stories of their experience with the client and told to their student colleagues—enhance the student's learning in the legal clinic?
2. In what ways, if any, does listening to and discussing the client's story of his or her experience in relation to the student, faculty, and legal clinic affect the students' learning, the faculty member's learning, or the faculty member's pedagogical approach?
3. In what ways, if any, does faculty storytelling—of the faculty member's own story of the student and client told to faculty colleagues—enhance the learning and affect the pedagogical approach of the faculty member?

These questions drove the design of the project and the data collection process, and provided a lens for the analysis of the data, conclusions, and recommendations.

III. RESEARCH PLAN AND METHODS

This section discusses the research method including the sample population, the action orientation, and the approaches to data collection.

⁹⁵ See John C. Flanagan, *The Critical Incident Technique*, 51 PSYCHOL. BULL. 327 (1954). Flanagan devised a process of eliciting experiences that yield rich details, details that are critical to the understanding of emerging events.

⁹⁶ *Id.* at 335.

⁹⁷ BARNEY G. GLASER & ANSELM STRAUSS, *THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* 62-65 (1967). Unlike quantitative research, qualitative research provides for ongoing insight and application of learning as the research progresses.

A. The Sample Population

Students in the General Practice Clinic⁹⁸ during one of three semesters were invited to participate in the research process. Participation in the research was voluntary and not linked to academic grades or any other form of evaluation.⁹⁹ Faculty also participated in storytelling of their experience with the students and their cases in a meeting separate from the students.¹⁰⁰ Clients were invited to share stories of their experience with the supervising faculty member when their cases concluded, without students present.

The authors extended invitations to students via a letter explaining the nature of the research and the time commitment (attendance at rounds and availability for a twenty- to thirty-minute telephone interview). The Pennsylvania State University Institutional Review Board approved the project and all the data collection protocols.¹⁰¹ The authors also obtained written consent to participate from all the students, both when students told stories and later when they recounted their experience of telling a story. The releases emphasized several points: that participation was voluntary; that if anyone was uncomfortable, they could withdraw at anytime; and that the authors would make limited use of the story. The authors assured students they would not use the tapes or transcripts of the tapes in a way that revealed the student's identity.¹⁰²

Having taken those steps to protect students, the authors recognize that there is some coercion inherent in the situation; these are students who enrolled in the clinic for six credits and a grade.¹⁰³ It would be naïve to assume that students felt completely free to walk away from the process.¹⁰⁴ For that reason, it was important to separate the storytelling process from student grades.¹⁰⁵ Students were ex-

⁹⁸ *Supra* note 9 (providing details about the structure of the General Practice Clinic).

⁹⁹ Lyman, *supra* note 54.

¹⁰⁰ As described in detail below, students told their stories during class time that had formerly been devoted to rounds. See Susan Bryant & Elliott S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?* 14 CLINICAL L. REV. 195 (2007).

¹⁰¹ See Nina W. Tarr, *Clients' and Students' Stories: Avoiding Exploitation and Complying with the Law to Produce Scholarship with Integrity*, 5 CLINICAL L. REV. 271, 273 (1998).

¹⁰² See INSTITUTIONAL REVIEW BOARD GUIDEBOOK (Robin Levin Penslar et al. eds. 1993), available at http://www.hhs.gov/ohrp/irb/irb_guidebook.htm.

¹⁰³ See Tarr, *supra* note 101, at 273-74, 275 n.16 (citations omitted). In an article that underscores the importance of obtaining IRB approval, Nina Tarr wrote, "It is apparent from a review of scholarship produced by law clinic teachers that clinic teachers must acknowledge that they are researchers and not simply teachers and lawyers. This paradigm shift probably has been occurring without explicit recognition for some time. We provide service to clients and teach students, but we also gather data. We must be cautious of the potential for exploitation."

¹⁰⁴ *Id.*

¹⁰⁵ Formerly, how well students conducted their rounds session affected their grades.

pected to listen to other student's stories, but they were not graded on the story they told, the quality of the telling, or the structure of their story. While some students expressed joking wariness about it, they all agreed to have their stories recorded.¹⁰⁶

In addition to concerns about protecting students in the course of the research, there were also concerns about protecting clients. The Rules of Professional Conduct for the District of Columbia provide that lawyers may not disclose the confidences or secrets of their clients.¹⁰⁷ Because Professor Tyler is not an employee of "the firm" that is the legal clinic, students were particularly careful about client confidentiality when telling their stories. Specifically, when they were telling their stories in Professor Tyler's presence, or later discussing the process of crafting their stories, students agreed never to refer to their clients by name or other distinguishing characteristics. They changed client identifiers such as name, gender, occupation, age, number of children, or type of case. Students were uniformly careful about obscuring the identities of their clients, so much so that at times, faculty members had difficulty figuring out which clients they were talking about.¹⁰⁸

Faculty whose students participated in the research were also invited to tell stories of their experiences with the students and their clients. The authors and other clinical faculty who had students participating in the research served as listeners for these sessions. These stories were also recorded for use solely by the faculty member on the recording. These recordings offered faculty the opportunity to watch their own version of the student and client story immediately juxtaposed to the student's versions of the experience, and to consider the extent to which the versions converged or diverged and where there were surprises.

The initial design also called for clients to share stories of their

¹⁰⁶ One student expressed more serious reservations about being taped. Her wariness seemed to be borne out of self-consciousness and anxiety about not presenting well on tape. The student was offered the opportunity to be audio taped instead or not be taped at all. After watching other students tell their stories, she agreed to be videotaped, and apart from some evident early nervousness, did not appear to be distressed by being taped. In the follow-up interview the student said of the experience, "I actually had fun doing it." Transcript of recorded interview (on file with authors).

¹⁰⁷ Since Professor Tyler was not part of the legal clinic "firm," students were asked to observe the District of Columbia Rules of Professional Conduct Rule 1.6 B Confidentiality of Information. This Rule is identical to ABA Model Rules of Professional Conduct Rule 1.6. Students were cautious about revealing any information that would identify their clients. Additionally Professor Tyler agreed to treat anything she thought she had learned about a particular case or client as confidential. If this approach to capturing student stories is adopted in other clinics, a freer exchange of details would be expected because anyone hearing the stories would be likely to be part of the firm.

¹⁰⁸ Transcript of recorded interview (on file with authors).

experience.¹⁰⁹ Clients were provided the same letter of explanation and consent forms as students and faculty. To protect client confidences, a clinic employee collected those stories. The clinic retainer agreement promises clients that the clinic will share information about their cases only with other clinic students, staff, and faculty, and will not share information with anyone else without their explicit permission.¹¹⁰ Professor Tyler was not privy to any of the client stories or the recordings of these stories, nor were these stories transcribed. These stories were recorded with the assurance that they would be seen only by students and faculty members directly connected with the client. These stories were included in the original research design as a basis of comparison, as a way for students and faculty to triangulate their experiences.

B. The Action Orientation

The research was designed against the backdrop of the research questions, in the spirit of action research, the *in situ* circumstances, and the rhythm of the setting in which it was conducted—a busy general practice legal clinic focusing on civil litigation for low-income individuals. The spirit of action research is that the process informs the process.¹¹¹ There is a reflexive element that examines what happens in the course of the research and improves the research process. The authors developed the experimental design described below with the expectation that the design would evolve as the research progressed over the course of three semesters.¹¹²

The clinic cycle is somewhat non-linear and recursive given the nature of the work, but it runs each semester according to the same general pattern. At the outset of each semester, the faculty assign student pairs to work with clients on their presenting legal problem. Based on the activity cycle of the clinic, the initial design called for two sets of storytelling to take place in the semester for both students and faculty, at roughly the mid-point and at the close of the semester.

¹⁰⁹ Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2079 (1989). Since gaining the client's perspective on their experience held particular promise both as a way of improving the quality of the clinic and as a way of valuing their point of view, we hoped that client stories would help students explore and expand their view of facts. As Scheppele noted, "It is the implicit contrast between those whose self-believed stories are officially approved, accepted, transformed into *fact*, and those whose self-believed stories are officially distrusted, rejected, found to be untrue, or perhaps not heard at all. Those whose stories are believed have the power to create fact; those whose stories are not believed live in a legally sanctioned 'reality' that does not match their perceptions."

¹¹⁰ Columbus Community Legal Services Retainer Agreement, The Catholic University of America Columbus School of Law (on file with authors).

¹¹¹ Marsick & Gephart, *supra* note 16.

¹¹² Marsick & Gephart, *supra* note 16.

The idea was that students would come together to reflect on their work with clients and to craft a story based on some prompting questions. They would then tell the story to their colleagues. Pairs of students working with the same client might talk about the same client and would have an opportunity to hear their partner's rendition of the story.

Prior to each story, listeners would be reminded that they would, once each story was complete, have the opportunity to ask clarifying questions, and to provide some appreciative feedback to the teller about the story. This feedback could include comments on the story itself, its content, structure, and use of narrative conceits such as repetition, and on the way the story was told, including performance devices such as eye contact and voice modulation. Following each story, the professor in the room would facilitate a conversation about the story with the students, using the following prompts:

- 1) What clarifying questions do you have for [name of teller]?
What else would you like to know?
- 2) What positive feedback do you have for [name of teller]?
- 3) [Name of teller], what questions do you have for your listeners? Is there anything else that would be helpful for you to know from them?

When the conversation came to a natural close, students who had not yet told stories would be invited to volunteer as the next teller.

Faculty storytelling sessions would follow the same format, but outside the presence of students: faculty would tell a story about a case or a student's work on a case to other colleagues. Those colleagues would then follow the same prompts given to the students—to ask clarifying questions and to offer positive feedback. The faculty member telling the story would then have the opportunity to ask the listeners questions.

Each student and faculty storytelling session would be recorded with the participant's full knowledge and permission. With students, the agreement would be that the recordings could be viewed only by the authors and the student's assigned faculty member. Faculty recordings would be viewed only by the faculty member who was recorded. As noted above, the initial design also called for clients to be invited to share their stories of their experience with the case.

C. Data Collection

Following each round of storytelling, Professor Tyler scheduled telephone interviews with each participant. These interviews ran fifteen to thirty minutes depending on the responses of the participant. The interviews were semi-structured, reflective of the research ques-

tions for the project, and employed the Critical Incident Interviewing Technique (CIIT)¹¹³ to understand the most notable aspects (positive, challenging, or one of each) of the participant's experience. These interviews were tape-recorded with the full knowledge and permission of each participant. The interviews were transcribed using a third-party service and then analyzed. To protect client confidentiality, no client interviews were transcribed, nor were any follow-up interviews conducted with clients.

IV. THE ACTION RESEARCH PROCESS: THE UNFOLDING OF THE STORY

The project was conducted over three semesters (no summers) with students who were enrolled in the clinic as student attorneys. This section outlines the way in which the action research unfolded. It highlights key changes made to the initial project design based on lessons learned during implementation, especially feedback from faculty and students in the interviews that followed the storytelling sessions. All participants were aware of the nature and purpose of the project, and signed agreements to participate in the storytelling, including the recording, and the follow-up interviews, in keeping with the standards of IRB approval.¹¹⁴

A. Semester One

The original design of the project included story work with three constituents: student attorneys, clinical faculty supervising the students, and clients. The process began early in the fall semester with six students who, in the presence of Professor Tyler and their classmates, told their stories of their experiences of working with their clients.¹¹⁵ Professor Tyler attended and facilitated, but no faculty members were present. The first set of storytelling sessions occurred in mid-September. By that time, the students had reviewed their files, and some had already met with their clients. They were encouraged to choose the

¹¹³ Flanagan, *supra* note 95.

¹¹⁴ 45 C.F.R. § 46 (2005).

¹¹⁵ It was important that the students were able to tell their stories to other students. Linda Gorham emphasized the importance of the audience when she wrote, "This is what happens with stories. I'd like to look at it this way: when I'm giving you facts, information is being passed down from me to you. I'm the giver; you are the receiver. But when I'm telling you a story, we're developing a relationship—a three-way sharing connection. We now have the story, the teller and the audience. That is the key. When sharing stories, the teller is more aware of the audience; in fact, the audience participates in the event. Storytellers adjust what they say by the reactions they receive from the audience. It's a powerful dynamic." AALS Sec. Leg. Writing, Reasoning & Research, Annual Meeting Program, *Developing the 5th MacCrate Skill-The Art of Storytelling*, 26 PACE L. REV. 501, 513 (2006) [hereinafter *The Art of Storytelling*].

story they felt was most compelling.¹¹⁶ Sometimes this resulted in both partners assigned to a case telling a story about the same case, but telling the story in different ways.

In this first semester, students were encouraged to think about crafting the story that they were going to tell.¹¹⁷ They had a little time at the beginning of the storytelling session to make notes or to reflect on what story they wanted to tell and how they wanted to tell it. Students expressed some uncertainty about their ability to tell a story.¹¹⁸ An unmanned camera was focused on a particular chair, which became the teller's chair. Students volunteered to come up to the teller's chair and tell a five- to seven-minute story. Each student took a turn, and these stories were captured on the recording.

At the end of each student's story, there was an opportunity for the other students to do two things. One was to ask any clarifying questions, an opportunity to flesh out details of the story that seemed to be missing or confusing to the listeners. Then students were asked to give the teller some positive feedback about the story itself, the way the story was told, or the way the story was crafted. That completed the student's turn. Individual recordings were made available for review by both the student storyteller and the faculty supervisor, with the student's consent.

¹¹⁶ Lorillard, *supra* note 70, at 255. Because decision makers—judges, juries, the clients—must choose which story to believe, it is hugely helpful to students to have actual practice in devising and telling stories. Lorillard wrote, “Legal stories fall within the general description of narrative, but with a different end: the law is about prioritizing stories, choosing one story over another. The law seldom hears only one side of the story. In the law, two or more storytellers explain what happened to them and how it felt, and ask another to stand for a moment in their shoes. Legal storytellers, then, use stories rhetorically, in an attempt to persuade others to accept their version of what has happened in the world, or to change another's views or understanding about world events.”

¹¹⁷ John H. Blume, Sheri L. Johnson & Emily C. Paavola, *Every Juror Wants a Story: Narrative Relevance, Third Party Guilt and the Right to Present a Defense*, 44 AM. CRIM. L. REV. 1069, 1090 (2007). We devoted class time to a discussion of what makes stories believable. Blume observed that, “There are several factors that determine whether a particular story will be accepted as true. Pennington and Hastie group these factors into two ‘certainty principles’ called ‘coverage’ and ‘coherence.’ Coverage refers to the extent to which the story accounts for the evidence presented at trial. . . . Coherence has three related sub-components— consistency, plausibility and completeness. A story is consistent when it does not contain internal contradictions either with other evidence in the case, or with other parts of the explanation. A story is plausible if it corresponds with the juror's general ‘knowledge about what typically happens in the world.’ Finally, a story is complete when the ‘structure of the story has all of its parts.’ ‘Missing information, or lack of plausible inferences about one or more major components of the story . . . will decrease confidence in the explanation.’” (citations omitted).

¹¹⁸ Philip N. Meyer, *Convicts, Criminals, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 J. LEGAL EDUC. 129, 130 (1992) (“Many students have a creative and imaginative story sense when they come to law school, but little of it remains after the first-year legal writing course and half a dozen examinations spent trying to find as many of the relevant legal principles evoked by the desiccated hypothetical facts as possible.”).

At the end of each of these storytelling sessions, students signed up to schedule a time for a half-hour telephone interview with Professor Tyler. During that interview, she asked them a series of open-ended questions about their experience both as storyteller and story listener. (See Appendix 1.)

The next element of the project was to meet the faculty supervisor for this group and ask her to tell the story of her work with each student. This occurred several weeks after the initial storytelling session with students. In the first semester, Professor Tyler and one of her colleagues listened to the faculty supervisor's stories, asked clarifying questions, and gave appreciative feedback. These stories were also recorded, for review only by the faculty supervisor.

This approach allowed the faculty supervisor to listen to the student stories and compare them with her own version of the stories. Importantly, the faculty supervisor recorded her stories prior to hearing the students' stories. A review of both sets of stories—the student's version of his or her experience with the client, and the faculty supervisor's version of her experience with the student's approach to the client—could then inform a conversation relatively early in the semester, in which the faculty supervisor and the student could discuss where there were differences or surprises. The intent was to allow for early adjustments in approach and resolution of misunderstandings, in addition to an opportunity for positive feedback. Later in the semester, there would be another opportunity to repeat the process where the faculty supervisor would once again juxtapose her own recorded stories with the student's version and again meet with students individually to talk about perceived differences and to affirm good progress. Students did not see faculty recordings.

This second set of storytelling sessions took place in November, toward the end of the semester. Here students were asked to pick up where they left off with their client stories. As before, one student volunteered to go first, the stories were recorded, listeners asked clarifying questions and gave appreciative feedback, and the story sessions were followed by interviews with each of the students. The faculty supervisor also engaged in a second round of recorded storytelling.

The third element of the project in the first semester was an attempt to elicit client stories.¹¹⁹ The purpose was to triangulate the experience from the students' perspective, from the faculty's perspective, and from the client's perspective. However, collecting the client

¹¹⁹ See Karen Barton, Clark D. Cunningham, Gregory Todd Jones, & Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 CLINICAL L. REV. 1 (2006). This article underscores the value of developing a process to obtain client stories.

stories proved difficult.

In order to protect client confidentiality, the initial protocol called for the faculty member supervising the case to elicit stories from clients about the case. (See Appendix 2.) These interviews were conducted at the conclusion of the cases out of concern that clients might otherwise worry that their candor could have negative consequences for their representation. Two problems with the client selection process soon became apparent: the sample client stories were not representative, and the clients who were interviewed were all extremely positive about how their cases had been handled. Clients who might have been less pleased—those who had withdrawn from representation or who were experiencing current difficulty with the way the students were handling their cases—were not available to tell their stories. Only the clients who were in the narrow category of being willing to talk once their cases were completed were included in the process. After the first two client interviews netted little but praise, the authors hoped to get more nuanced stories with interviewers who were neither the student who had done the work nor the supervising attorney. To protect client confidentiality, these interviewers were other members of the clinic firm. First the managing director, then an administrative assistant, interviewed the clients. Significantly, the clients and the administrative assistant agreed in the interview that the questions were not clear, and the administrative assistant acted as a translator of the questions, revising them on the spot rather than sticking to the script as the supervising attorney had done. Nonetheless, the stories that the clients told were almost identical to stories that other clients had told the supervising attorney, overwhelmingly positive but without much content. There was little that seemed useful coming out of these interviews. For this reason, client interviews were eliminated in the following semester.

B. Semester Two

In the second semester, the research process retained the basic structure of two recorded storytelling sessions by students and faculty, followed by semi-structured interviews. However, significant changes were made to the project in the spirit of action research, “which involves cyclical processes of diagnosing a change situation or a problem, planning, gathering data, taking action, and then fact-finding about the results of that action in order to plan and take further action.”¹²⁰ These refinements are briefly discussed here, with further

¹²⁰ Joseph A. Raelin & David Coughlan, *Developing Managers as Learners and Researchers: Using Action Learning and Action Research*, 30(5) J. MGMT. EDUC. 670, 676 (2006).

elaboration in the Findings section on the influences that led to them.

In addition to eliminating the client interviews, the authors expanded the project to include all the students enrolled in the General Practice Clinic as well as a second faculty member. This increased the number of participants to fourteen students supervised by one of two faculty members. None of these students had participated in the research in the prior semester.

More guidance on storytelling was provided. A three-hour class on case theory was added to the clinic curriculum before the initial storytelling session to help ground the students in the relationship between law and storytelling, in particular the theory of the case. Binny Miller has described case theory as “the basic underlying idea that explains not only the legal theory and factual background, but also ties as much of the evidence as possible into a coherent and credible whole.”¹²¹ The class emphasized the value of story and provided an opportunity to tell a story using a fictional case with which the students were already familiar. Written prompts were provided to the students one week before the scheduled storytelling session (see Appendix 3).

For logistical reasons, the authors decided to integrate storytelling sessions into the already existing rounds structure rather than having specially scheduled sessions added on to the students’ normal clinical schedules.¹²² Also, delay between the student storytelling session and the recording of the faculty stories was minimized.

The students were divided into two groups based on their supervisor. Each group convened in a private room with a camera. The faculty members (now there were two) sat in to listen to the stories of students for whom they were *not* the primary supervisors. As with the first semester, this allowed students to tell their stories without being inhibited by the presence of their primary supervisor and without worrying whether or not they were telling the “right” version of the story. Students knew that their supervising attorney would review their recordings, but the hope was that students would tell more authentic stories if their supervisors were not in the room when the stories were told. By having a member of the clinical faculty present (albeit one who did not have primary responsibility to grade the student), issues raised by the students’ stories could be addressed in order to refine in

¹²¹ Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 492 (1994). See also Steven Lubet, *The Trial as Persuasive Story*, 14 J. TRIAL ADVOC. 2, 75-95 (1990).

¹²² See Bryant & Milstein, *supra* note 100, at 196. In describing the traditional model for clinical rounds, the authors said, “In these facilitated classroom conversations in which they discuss with each other their cases or projects, students apply and test lawyering theory in the real world as well as extract theory from their and their classmates’ experiences.”

real time the students' approaches to their work. Students took turns telling stories, responding to clarifying questions, and receiving positive feedback from both their student colleagues and the faculty member. Students were invited to view their recorded stories, and could sign up for a timeslot during the following week in which they would be interviewed about their experiences.

Supervisory stories were recorded during the same week as the students' storytelling rounds. Each faculty member's own recording and the recordings of her students were then made available to the faculty member for viewing, followed by conversations with the students about their stories. As in the first semester, this process was repeated a few weeks before the end of the semester, when the students were wrapping up their work in the clinic.

C. Semester Three

The third semester affirmed the changes made between the first and second semesters, e.g., the inclusion of a class on case theory with an emphasis on storytelling (complete with several opportunities to practice), brief storytelling prompts delivered a week before the storytelling session, two faculty members sitting in on the cohort of tellers whom they did not supervise, and the substitution of story sessions for rounds. The only change to the action research during the third semester was the addition to the case theory class of a recording of a former student, telling his story of the importance of storytelling in one of his cases.¹²³ The clinic director attended the class on case theory. Table 1 summarizes the evolution of the storytelling action research process in the legal clinic with student attorneys, faculty, and clients.

¹²³ Farber & Sherry, *supra*, note 64, at 821-22. Informally told stories about an individual's personal experiences are of recognized value helping novices develop expertise. Farber and Sherry describe the value of story in training Xerox technicians, who learn from: "the stories tech-reps tell each other-around the coffee pot, in the lunchroom, or while working together on a particularly difficult problem. These stories are crucial to the technician's acquisition and application of expertise: In a sense, these stories are the real 'expert systems' used by tech-reps on the job. They are a storehouse of past problems and diagnoses, a template for constructing a theory about the current problem, and the basis for making an educated stab at a solution. By creating such stories and constantly refining them through conversation with each other, tech-reps are creating a powerful 'organizational memory' that is a valuable resource for the company."

Table 1.

Evolution of the Clinical Legal Storytelling Action Research

Characteristic	Semester One	Semester Two	Semester Three
Student Involvement	Six students in two groups	Fourteen students in two groups	Fifteen students in two groups
Faculty Involvement	One faculty member No faculty present during storytelling sessions	Two faculty members Faculty members sat in with colleague's students for storytelling sessions	No change
Transfer of knowledge via storytelling			With a student's permission, used a recording of him talking about the importance of the client's story to case theory
Client involvement	Five clients interviewed	Eliminated client storytelling	No change
Scheduling of storytelling sessions	Special sessions in addition to student's clinical schedules There was a gap between the student and faculty storytelling sessions	Storytelling incorporated into regularly scheduled rounds The gap between the student and faculty storytelling sessions was eliminated	No change
Student preparation for storytelling	Prompts provided at the outset of each storytelling session, with ten-fifteen minutes to "sculpt" a story	Prompts provided one week before each storytelling session, with ten-fifteen minutes to "sculpt" a story at the outset of the session Class on case theory emphasizing the role of story with opportunities for practice prior to first storytelling session	No change Class on case theory and storytelling attended by the Director of the Clinic
Interest in review of recordings by students	No student requests to view recordings	Two student requests to view recordings	One student request to view recording

V. FINDINGS

The intent of this action research project was to better understand the role that storytelling can play in a clinical setting focused on legal education and practice. The project was designed around the three research questions articulated earlier, focusing on student learning as influenced by the storytelling process, the effect of client storytelling on students and faculty, and the ways in which the storytelling informs faculty learning and their pedagogical approach. Data was gathered in semi-structured interviews and analyzed using constant comparison¹²⁴ to inform the design of the action research and to provide a deeper understanding. This section will discuss the findings.

A. *The Effect Of Storytelling On Student Learning*

The first research question concerns the effect of a systematic storytelling process on student learning.¹²⁵ Viewing the interview data through the lens of Bloom's taxonomy,¹²⁶ students appear to be moving up the taxonomy from pure application (level three) into the higher orders of cognition that Bloom labeled synthesis and evaluation (levels four and five, respectively). While this desirable outcome was not so evident in the process of telling the stories to fellow student attorneys, evidence of this shift emerged during the interviews that followed the storytelling sessions.

In responding to interview questions, students provided evidence of increasing cognitive sophistication as they discussed ways in which the storytelling process was helpful in deepening their understanding of their cases. For some students, the storytelling process highlighted areas for further inquiry, in order to develop the story and render it accurately:

It helped me to understand what I knew and what I wasn't sure of . . . it made me realize that I wasn't certain . . . I wanted to put in something about the abuse, but I realized I didn't know where the abuse had occurred. You know, I knew the city, but I didn't know was it at home? Was it outside? I didn't have enough detail.¹²⁷

¹²⁴ See GLASER & STRAUSS, *supra* note 97.

¹²⁵ Winter, *supra* note 3, at 2228. Our hope was that telling stories about cases would inevitably lead to deeper understanding. As Winter observed, "The attraction of narrative is that it corresponds more closely to the manner in which the human mind makes sense of experience than does the conventional, abstracted rhetoric of law. The basic thrust of the cognitive process is to employ imagination to make meaning out of the embodied experience of the human organism in the world In narrative, we take experience and configure it in a conventional and comprehensible form. This is what gives narrative its communicative power; it is what makes narrative a powerful tool of persuasion and, therefore, a potential transformative device for the disempowered."

¹²⁶ See BLOOM, *supra* note 18.

¹²⁷ Transcript of recorded interview (on file with authors).

The process of constructing and conveying the story helped students to see a narrative pattern that reached beyond what had previously appeared to be a mountain of facts:

Because our client's situation was so fact intensive and had a lot of financial aspects to it and dates to remember, it was very, very confusing until I started to create a story behind it. . . . So really I learned more about our client's case and more about what we should be doing and what's important by putting it into a story.¹²⁸

Some student comments suggest that the process resulted in a difference in perception of the fundamental work on the case:

I think the biggest thing I realized is that we had kind of lost a little bit of the focus about the child. We were so concerned with the mother's reaction The point here is to help the child, but . . . I was telling the story that, even in our internal memos, we had really been focusing on [the mother].¹²⁹

The reflective process of crafting and telling the story helped students to grapple with their own perception of the client's story, as indicated by one student who, as she was telling the story, "started to think about the passage of time, and how the story is about history, and less about the law, and I saw my position shifting as I was telling the story." Another student began to consider the process and outcome for the client with a broader lens:

I felt my own position kind of shifting as I was telling the stories . . . I was kind of taken aback . . . like, 'what are we really doing for her?' I think in my story I actually said, 'by the way, here's the reason why we're handling this case.'¹³⁰

Students frequently described a shift in their relationship to the client's story, and, without exception, the students reported some way in which their understanding of the client story became clearer or deeper by crafting and telling the story. One student expressed the essence of that shift, the way in which the storytelling process felt different to students from the usual experience of law school, when he said,

It was interesting to come at it from a storytelling point of view; it humanizes everything you do so much more. And I think that it is sometimes—well, most of the time—the best way to reach your audiences is to make the story human, to have them empathize and sympathize, and understand what's going on. And once you catch them there at the heart of it, you automatically get people on your side. And that is something that is not portrayed in law school. I mean it just doesn't come across to us.¹³¹

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

The process also increased many students' awareness of the importance of knowing the listener, and tailoring the story for the audience, exemplified by this comment:

If you are telling the client's story to the judge, here are some things you're focusing on, or you could be telling a story to a jury. . . . sometimes the story you tell a judge and jury may be the same; it may be different. And then you have the story you'd be telling your client or other people that aren't into the legal field, or you might have stories that you tell your fellow attorneys. I realize that the stories are the same, but how dramatically different they could be for each one.¹³²

The concept of telling a story as a way of engaging listeners was also a consistent theme:

I think immediately I saw the benefit in that if you prepare a story or prepare how you want to tell it, you can captivate someone's attention. You can get them almost invested in your story. So if you can somehow create your story to make them interested and gain an interest, then a lot of things can come from that. You can get their trust and their attention, and you get them thinking, and that's a really strong tool if you're advocating a position on behalf of someone; if you can tell a story and then they believe you, then you have their trust. . . . So I think that that's just an amazing tool that I don't think I would have ever figured out if I hadn't had that opportunity.¹³³

Students were grouped with other students who worked with the same supervisor. As a result, teams who worked together were in the same room, often telling a story about the same client. Although students expressed concern about not "boring you with the same story," it was enriching to hear a story more than once and from a different perspective.¹³⁴ Because they did not necessarily tell back-to-back, the second tellers had some time to process both their own reaction to their partner's version of the story and the feedback from other listeners. Students expressed great interest in hearing their partner's version of the story: "It was really interesting to hear my partner tell the story, because I know the facts of the case. It was interesting to watch

¹³² *Id.*

¹³³ Transcript of recorded interview (on file with authors).

¹³⁴ Two students recounted being treated roughly by an administrative law judge. The student who had actually been threatened with removal from the hearing room told a much more restrained, deliberate version of the story; in contrast his partner spoke with great outrage on his behalf. The retelling of this story turned out to be a good opportunity for students to see that "[s]tories may diverge, then, not because one is true and another false, but rather because they are both self-believed descriptions coming from different points of view informed by different background assumptions about how to make sense of events." Scheppele, *supra* note 109, at 2082.

somebody else; it's like watching someone else cook a dish that you make too, seeing what they put in, what they leave out."¹³⁵ In every instance where two students told stories of the same client, students found value in hearing each other's versions:

We told basically the same story about the same client—well, the same client—but we told it in slightly different ways. Even though I knew a lot of the facts, it was interesting to watch. He went first but chose to emphasize things I wouldn't have, and I had decided, before he even went, that I was going to talk about it in a certain different angle, and so it was just interesting the different takes even by two people working on the same issue. I thought that was what happened with the other team, too. That was interesting to see how the same facts could be used or presented in different ways [for] different results.¹³⁶

Some pairs gained insight into their cases from listening to their partner's version of the story:

I actually learned from when my partner told the same story, because I learned about certain incidents that happened, that I didn't know everything about them. I definitely learned new facts when he told the story. There was definitely a difference, and I thought he did a better job of developing who our client was. Whereas I focused more on procedurally what happened.¹³⁷

As students got better at telling their stories, they started to discern the differences in their approaches. They made conscious decisions to try things out in different ways, to be more deliberate in how they structured their story, how they communicated their story. The more students listened, the more they became connected with the richness of other students' stories, which in turn informed their own stories. As one student explained,

I was trying to get the message, I was trying to get the law, I was trying to understand the client best, and I was trying to see their style and demeanor, and I thought it was a bit overwhelming . . . I realized that one has to really try to cater a message just to be effective.¹³⁸

The storytelling process became something more than just a performance for these students. Over the course of the semester, especially in semesters two and three of the project where the case theory class enhanced their understanding of the role of storytelling in law, students began to see dual value in the process. On one level, it enhanced their relationship with the client:

¹³⁵ Transcript of recorded interview (on file with authors).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

It made me, as empathetic as I already am with my client, it made me even more so . . . I mean, I've read his symptoms over and over again on paper. To say it out loud, which just seemed being more real, I guess. And, I felt, I could even be more sympathetic to my client.¹³⁹

Second, it increased their proficiency as a client advocate:

It was important just to put all the facts straight in my head on the case, though, . . . it would be a really good way to [tell the client's story] periodically just so if there are any other avenues that you can go with a certain issue, and you'll realize that when you're telling the story.¹⁴⁰

The process shifted from one the students felt compelled to do because their supervisor had invited them to participate in the project to a way of working on behalf of their clients. One student commented on the effect of listening to colleagues' stories on his desire to improve his own ability to tell a story, suggesting that a colleague's

use of that image consistently throughout, was perfect . . . You know, I've been trying to, actually in the past week, trying to come up with my own image like that because I can think of no better argument . . . you know, to say: "Imagine that this is like Whack-A-Mole. We all know the game." It's such a good litigation skill to be able to relate. I definitely took away the use of imagery as being very important.¹⁴¹

Many of the students expressed a curiosity about how to better elicit stories from their clients. They wanted to know how to ask questions to get information, and to practice sculpting information into a cogent story for the client, a judge, or a jury. They became more sophisticated in terms of their process and their patience with their clients, and sharpened their analytical abilities. One result is that students refined their ability to deliver the story of the client's case back to the client for clarification and to ensure that the both the student and the client understood the nuances of the case:

I think it will definitely change how we deal in legal jargon, because we really tried to not put that in our story. Even though we're surrounded by [other law students] who would understand all those terms and stuff . . . I think it facilitates a better dialogue if the client always feels like she knows what we're talking about. So, that was really good for us to be able to start telling the story without [using] specific words that the court may use.¹⁴²

Connected to the opportunity the students had to listen to the

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Transcript of recorded interview (on file with authors).

¹⁴² *Id.*

stories of their peers, there was an unanticipated finding linking the story-listening process to the formation of professional identity. Students were able to compare their own reactions and responses to cases to those of their colleagues, determining where they felt they were situated on a spectrum of professional behavior, such as empathy: "It was good to hear different perspectives on the sensitivities of clients. I think that places where I either heard someone being empathetic to a client or the absence of that empathy is good. It made me think."¹⁴³ The process helped to shape students' sense of what it means to be a professional in the field. One student said, "It's helping me to have a more professional demeanor. I see that it is about more than knowing the law; it's about using the law to advance the story."¹⁴⁴ Another student remarked, "It was a helpful because you get to hear what other people are doing and ways that they try to solve problems."¹⁴⁵

While more study is needed on this point of identity formation, the structured storytelling seems to contribute to the process of forming personal identity as a practitioner of law.¹⁴⁶ The students' comments demonstrate a broadening of their vision beyond their own experience in a way that was not just reporting but that leveraged the richness of stories.¹⁴⁷ "It made me feel more like I could actually tell a human-side story, as opposed to just a procedural version. And that's the kind of lawyer I want to be."¹⁴⁸ Because students could listen more deeply to a story than they would to a classroom presentation or recitation of facts,¹⁴⁹ they were able to situate themselves in the story

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Menkel-Meadow, *supra* note 62, at 792. Menkel-Meadow describes the value of listening to stories as important to identity formation: "The use of cases and stories are intended to give us a closer, more intimate, as well as broader experience (even if only vicariously) of situations—others', so that we might function better in our own. By bringing vividness and inducing 'feelings,' stories and cases are meant to make us feel more directly implicated in what we read and understand. 'Feeling with' a character in a story or case allows us both to empathize or sympathize, as well as to criticize and consider what we might do differently in the same situation. Thus, the use of cases and stories is vicarious clinical experiential learning—thinking rationally and emotionally from someone else's experience, to make judgments about what is wise or proper to do in a given situation."

¹⁴⁷ Story is a way of making and communicating meaning. In the words of Toni Massaro, "stories are one way to bring law down to life, to the people, 'to the ground.'" Massaro, *supra* note 79, at 2105. *See also* JEROME BRUNER, MAKING STORIES: LAW, LITERATURE, LIFE 6 (2002) ("Stories, therefore, have been called 'culture's coin' because they convert 'individual experience into collective coin which can be circulated . . .')."

¹⁴⁸ Transcript of recorded interview (on file with authors).

¹⁴⁹ Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L.J. 2475, 2479 (1993) ("Telling these stories helps both the storyteller and the listener. After listening to stories, others can learn - at least to some degree. Hearing narratives can provide a thick and rich context for more localized understandings.").

and undertake the cognitive modeling that Bandura refers to as mental rehearsal, putting themselves in the stories of their peers as the protagonist.¹⁵⁰ When there was a disconnect between what the students believed they would do and the approach taken by a colleague as conveyed in the story, it was temporarily disorienting, a sort of surprise that prompts reflection.¹⁵¹ It is at that point of reflection that students move into evaluation, at the peak of Bloom's taxonomy, and begin to make choices linked to the formation of their professional identity, and to make decisions about the sort of attorneys they hope to become.¹⁵²

In the first semester, the students expressed frustration that they did not have sufficient time to prepare their stories. When one student suggested that it would be helpful to have some prompts for story construction sooner, other students were asked about the perceived value of this suggestion. There was consensus that this would help, with one caution that distributing the prompts too early would have the same result as not distributing them at all. In the following semester, the prompt sheets were distributed one week before a storytelling session. Many (though not all) students used the prompt sheets and found them helpful:

It's always nice to have a baseline, a framework, for knowing where I'm supposed to be going. I looked at it actually quite a few times before class. And then I was going over it again; what helps is [the list of questions] to kind of get you going with your story.¹⁵³

Making these prompts available to the students both a week before the session, and in the first ten to fifteen minutes of the session seemed ultimately to be the optimal way to accommodate different student work styles.

Moreover, this request for more instruction prompted the development of new class material focused on case theory and storytelling. The curriculum at the law school does not have a discrete storytelling component built into it.¹⁵⁴ So, for the second semester, students participated in a three-hour seminar on story connected to the theory of the case.¹⁵⁵ Students were easily persuaded that the ability to tell a

¹⁵⁰ See BANDURA, *supra* note 30.

¹⁵¹ Richard Delgado describes this shift in thinking as "akin to making a bed while still lying in it." Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2439 n.83 (1988).

¹⁵² See EDUCATING LAWYERS, *supra* note 14, at 353.

¹⁵³ Transcript of recorded interview (on file with authors).

¹⁵⁴ Scheppele, *supra* note 109, at 2085. ("[U]nlike rules of law, which are explicitly taught and tested in law schools, the craft of legal storytelling is generally left to the practitioner to learn and develop without formal and systematic training.")

¹⁵⁵ Scheppele, *supra* note 109, at 2085 For some students this was the first time they had considered a role for storytelling in law. As Scheppele observed, "Legal storytelling is no

compelling story was an important lawyering skill and that “the resolution of any individual case in the law relies heavily on a court’s adoption of a particular story, one that makes sense, is true to what the listeners know about the world, and hangs together.”¹⁵⁶ Put succinctly, “Stories are a fundamental part of how we understand the world, and the lawyer who ignores their use in litigation does so at his peril.”¹⁵⁷

This class focused on the value of the story in law and case theory.¹⁵⁸ Coupled with insights from research on the nature of stories in organizational settings, this class covered the story sculpting process, elements of structure, elements of telling, and data on what listeners like and respond to in storytelling settings.¹⁵⁹ In addition to this theoretical dialogue, students had the opportunity to practice crafting stories as part of case theory.¹⁶⁰ The hypothetical case that students had worked with in connection with the interviewing and client counseling sessions of the clinic curriculum centers on a child custody contest between parties who are more or less equally good parents but who both have some reasons why they might not be the best parent to have full

less patterned than other sorts of storytelling; indeed, it may be even more structured because it is embedded in a larger institutional framework that routinizes solutions to unusual events and that values regularity and predictability. But unlike rules of law, which are explicitly taught and tested in law schools, the craft of legal storytelling is generally left to the practitioner to learn and develop without formal and systematic training. And though this craft is constrained by rules of evidence and the demands of legal relevance, there are few formal legal rules providing guidance on how the lawyer or judge should structure stories.”

¹⁵⁶ See Scheppele, *supra* note 109, at 2085. See also Lorillard, *supra* note 70, at 255.

¹⁵⁷ Kanner & Nagy, *supra* note 1, at 1.

¹⁵⁸ Miller, *supra* note 121, at 487 (“Case theory - or theory of the case - can be seen as an explanatory statement linking the ‘case’ to the client’s experience of the world. It serves as a lens for shaping reality, in light of the law, to explain the facts, relationships, and circumstances of the client and other parties in the way that can best achieve the client’s goals. The relevant reality combines the perspectives of the lawyer and the client with an eye toward the ultimate audience - the trier of fact.”).

¹⁵⁹ See J.A. Tyler, *Developing and Testing a Guidebook for HRD Practitioners Using Storytelling as an Element of Learning and Knowledge Transfer Strategies* (May 2004) (unpublished Ph.D. dissertation, Columbia University) (on file with UMI Dissertation Database AAT3135386).

¹⁶⁰ Richard A. Posner, *Legal Narratology*, 64 U. CHI. L. REV. 737, 737-38 (1997) (citation omitted). Judge Posner emphasized the importance of taking care to structure stories. He wrote, “A story, or, better, a narrative (because ‘story’ suggests a short narrative), is a true or fictional account of a sequence of events unfolding in time, the events being invented, selected, emphasized, or arranged in such a way as to explain, inform, or edify. As Brooks reminds us in his introduction, paraphrasing Aristotle, stories ‘must have beginnings, middles, and ends’ and must be ‘so constructed that the mind of the listener, viewer, or reader (can) take in the relation of beginning, middle, and end’ and ‘see the end as entailed by a process.’ The story need not be true, but it must be coherent, intelligible, and significant.”

custody of the children.¹⁶¹ Each parent had a different perspective on the same case.¹⁶² Each student then told the story from either the mother's or the father's perspective, and practiced melding the techniques of storytelling with the case theory.¹⁶³

This process not only offered students more time to prepare, which they had requested, but had the effect of more deeply anchoring the legitimacy of storytelling and listening as important legal skills.¹⁶⁴ When the time came for the storytelling sessions, the students were ready to engage on two levels: the case theory class promoted a serious perspective related to the integration of storytelling and listening into their practice as attorneys,¹⁶⁵ and the story prompt handout provided an opportunity for them to prepare a story in advance. As one student said, "I think it [the opportunity to prepare a story before the class] definitely helped. Before I began trying to formulate my story in the last session last Tuesday, I knew that I wanted to figure out what the most important thing would be and try to convey that

¹⁶¹ Cahn, *supra* note 149, at 2499. Using a fact pattern that students were familiar with through the interviewing and counseling classes allowed students to experiment with selecting details to tell a compelling story from the perspective of one parent or the other. In describing the importance of selecting details, Cahn said, "Moreover, the story is also shaped by the law; certain details will be emphasized because of the legal standards that the story must satisfy."

¹⁶² Scheppele, *supra* note 109, at 2097 ("In rethinking legal narratives, the first step is to realize that the presence of different versions of a story does not automatically mean that someone is lying and that a deviant version needs to be discredited. Stories can be told many ways, and even stories that lead to very different legal conclusions can be different plausible and accurate versions of the same event. It may make sense, then, to think that the presence of these different, competing versions of a story is itself an important feature of the dispute at hand that courts are being called upon to resolve.").

¹⁶³ Kanner & Nagy, *supra* note 1, at 2-3 (citation omitted) In doing so, student became aware of the importance of storytelling in advocacy: "The successful lawyer also knows that ultimately what she is doing is telling a story. Understanding this storytelling paradigm is fundamental to her success, and she uses this knowledge throughout the litigation process. It affects case selection, it shapes her complaint, and it emerges not only as the narrative in her opening and closing statements, but also as a persistent theme that reinforces nearly every argument and brief in her case."

¹⁶⁴ Levit, *supra* note 20, at 259-60 ("Whether law students become lawyers who do transactional work or litigation, they will always be professionals who tell stories and people who understand experiences in narrative form. Susan Bandes capsulized it well when she said, 'metaphor is not merely an optional, rhetorical flourish. It is our most pervasive means of ordering our experience into conceptual systems.'" (citations omitted)).

¹⁶⁵ Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459, 465 (2001) (quoting DAVID BALL, *THEATER TIPS AND STRATEGIES FOR JURY TRIALS* 66, 66 (1994)). The most powerful tool for persuasion may be the story. "Story is the strongest non-violent persuasive method we know. Tell me facts and maybe I will hear a few of them. Tell me an argument and I might consider it. Tell me a story and I am yours. That is why every persuasive enterprise from the Bible to television commercials relies on story."

while I told the story.”¹⁶⁶

The legitimacy of storytelling was further enhanced by the decision, for the second and third semesters of the project, to integrate the storytelling session into regularly scheduled rounds, rather than having it as an add-on to the clinical curriculum.¹⁶⁷ Rounds were scheduled four times during the semester for a couple of hours per session. In previous semesters, each team of students was responsible for making a presentation to their classmates about the issues in one of their cases at least once during the semester. Some students used this time to practice an opening statement, others used it to seek advice on conducting a particularly difficult client counseling session, and still others used the time to conduct mini-classes on a legal issue that had surfaced in their cases. The best of these presentations offered the students making them and the students hearing them the opportunity to learn about topics not covered in the regular classes. However, the quality of rounds was uneven. This problem was compounded because the general practice clinic has a mix of case types and few teams had case types in common.¹⁶⁸ As a result, students struggled to make presentations on child custody relevant for students who were representing clients in consumer cases.

Substituting the storytelling session for rounds solved two problems. It provided a more consistently interesting way for students to learn from other students' stories,¹⁶⁹ and it kept the storytelling sessions from impinging on student and faculty schedules and their work with clients. For the duration of the project, the normal process for rounds was suspended and replaced with storytelling sessions.

Telling stories about their work in a law school setting is a new experience for most students.¹⁷⁰ They are not often invited to identify the most important aspect of their clients' cases and to craft a story around it. Initially, they have no formal training in telling this type of

¹⁶⁶ Transcript of recorded interview (on file with authors).

¹⁶⁷ See Bryant & Milstein, *supra* note 100.

¹⁶⁸ Students in this clinic have few case types in common. The challenge that presents in rounds was never more apparent than when it was absent: in one semester the District of Columbia cut off medically necessary transportation to hundreds of DC residents and the General Practice clinic picked up ten of those cases. For the first time, most students had cases that were factually distinct but based in a common body of law. Having this unified body of cases to talk about greatly improved the shared discussions. The level of interest in other cases was heightened by shared experiences.

¹⁶⁹ Menkel-Meadow, *supra* note 62, at 814 (“Stories can make vivid what is otherwise dull and hard to learn.”).

¹⁷⁰ Mark Weisberg, *Epilogue: When (Law) Students Write*, 27 *LEGAL STUD. F.* 421, 430-31. Mark Weisberg described a similar challenge when law students were asked to write in their own voices, “[I]n their legal education students usually don’t understand themselves as invited to use this kind of thinking, which leaves them without an important source for generating and working with their own ideas”

story, and it was helpful in the case theory session to model crafting and telling a brief story and to encourage them to be brave. It is also helpful to select someone to go first who is likely to tell a good story, one that is insightful or brave, honest or funny, and in the process give the group a jumpstart. Conversely, if the first story is safe and plodding, something extraordinary will have to happen to give students courage to speak from the heart. In responding to their classmates' stories, both in class (which might be expected) and in the later telephone interviews, students have been almost unfailingly enthusiastic about each other's stories.¹⁷¹

Finally, in terms of student learning, there was an interesting reaction by the students to the appreciative feedback part of the storytelling process. Students were asked to identify something they thought worked well in each story. They were discouraged from offering constructive criticism for the storyteller.¹⁷² Students found it easy to provide positive feedback, and it was enjoyable to receive, but many felt as though they were not really doing their job unless they pointed out how the story could be improved. The feedback sometimes resulted in students becoming aware that they had done something good with their story, typically with their delivery or construction:

I found that very helpful because say like most of time, people are focusing on, you know, negative feedback. And I think your point that, you know, just trying to build on the positive. I think that's really good because most people aren't used to that That was pretty much my first experience where there wasn't like too much focus on the negative, you know. And I think that's actually more helpful, because I find like that's true that I end up like thinking so much about oh, the negative part, that I forget what I'm doing

¹⁷¹ *Id.* at 425 (recounting a similar reaction to student work: "The first is perhaps the most powerful. Students' responses to seeing peer examples have been almost uniformly positive. People treat [their classmates' stories] not as one more proof of their own incompetence but instead, as suggesting what might be possible. Watching a peer step forward in her work, risking an unorthodox, perhaps highly personal, approach encourages other student writers to find ways to do the same. Not to copy what a colleague has done, but to push further on her own terms, or to discover what those terms might be. Experiencing unique, interesting perspectives on or approaches to a problem, people become curious about each other, and as they read and discuss what they've written, their imaginative horizons expand.").

¹⁷² The story sessions were deliberately structured to minimize criticism of newly generated stories told by novice storytellers. See Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 601, 606-07 (1996) (aptly describing the limitation of traditional feedback as asking novice learners "to explore performance by having 'objective' observers comment on weaknesses and/or failures. Because the common expectation is that the feedback recipient is to be told what was wrong, the feedback recipient's resulting view of her or his own work is primarily framed in terms of what was 'wrong.'").

well.¹⁷³

This sense of the power of appreciative feedback was far from universal. Students were not convinced that it was useful. They still want to know what to fix: "I feel like I do learn more from negative constructive feedback. As good as it feels to hear what you're doing right, I guess I do like to hear what I could do better."¹⁷⁴ They still operated on the assumption that something was broken, that there was a "right" way to tell the story, and they wanted to unearth that through a process of repair rather than appreciation. Consider this exchange between a student and Professor Tyler:

S: Well, I'm sort of bent on the critical aspect of it. I got a lot of positive remarks, but I felt like I didn't get enough of what I could have done to make it more clear So I felt like I was sort of stuck. If somebody had said, "Oh, well, this isn't clear," or, "maybe you could have done this differently." That might have helped.

JT: Or maybe — is it possible that you were just very clear?

S: I guess it's possible.¹⁷⁵

This reaction to appreciative feedback, and the desire for negative or constructive feedback, ultimately seems to surface as an element of the culture of law school, where students have been told consistently those things that they were doing wrong with little recognition of what they were doing right. The authors felt strongly that performance improvements resulted from appreciative feedback, but this remains an impression and a subject for further research that may have implications for the law school curriculum beyond storytelling and the pursuit of the "right" story on behalf of the client.

B. The Effect Of Client Storytelling

The process of obtaining client stories is fraught with difficulties. The first is the timing of the story. The authors were concerned that seeking client stories before the case was completed could seem coercive and that it might suggest to the client that candid comments could adversely affect the outcome of their case or interfere with the work of the students. Second, it was difficult getting clients to talk about their experiences when their cases were complete but had not been successful for one reason or another when they were unhappy with the ways the students performed, or when they were disappointed with the resolution of their cases. Those clients were unwilling to talk about their cases. This left a pool of clients whose cases were resolved and

¹⁷³ Transcript of recorded interview (on file with authors).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

who were satisfied with the outcomes.

The third issue that emerged, and it is related to the second, was that the stories clients told were always stories of gratitude, stories about how pleased they had been with the legal services that they had received, how delighted they were to have been represented by the students, and how wonderful the students were in every respect. Perhaps it seemed to clients ungracious at the conclusion of a successful case to express any dissatisfaction with the student or the clinic. There was no question that clients believed what they were saying at the time of the interview at the conclusion of their cases, but in some instances, the representation had been less than uniformly positive. At a minimum, it was expected that clients would recount some initial misgivings upon learning that they were not going to be represented by "a real lawyer" or that calls were not returned as promptly as expected, or that they tired of receiving letters from students at the end of the semester promising that a new student would "be in touch soon." The story that the client tells a next-door neighbor or a grandson about the experience at the legal clinic may be very different from the story that the client feels comfortable telling someone who works at the legal clinic.

If students have been respectful toward their clients, or kept them well informed, or acted in other ways that the clients felt good about, the clients may not have known about the difficulties the student may have experienced in connection with the case. The clients may not be able to judge some aspects of the quality of the legal services they received. That led, unexpectedly, to the fourth problem with collecting client stories: how much weight students and faculty gave the client stories in evaluating student performance.

Originally, the idea had been that the faculty member and the student would listen to the client story together and compare that story against the faculty perspective and the student perspectives to get a more robust understanding of the experience from the perspective of all three of the critical players. What emerged was a social dynamic that prompted clients to have nothing but lavish praise for the students. A client's effusive praise was helpful to one student who had done an excellent job but had a nagging sense that he should have done more. The client's praise enhanced this student's sense of accomplishment and boosted his confidence in his abilities as an advocate. As the supervising faculty member observed,

It really had some benefit for students to see their clients speak well of them. One of them [the clients] said, "They saved my life. I was just drowning." That may have been a little hyperbolic, but it was heartfelt, and I think it was important for the student to hear what

he meant to [the client].¹⁷⁶

Conversely, another client story presented a problem where a student had balked all semester at researching a key issue and produced a poorly written memorandum of law at the last minute. The student argued that because his client expressed enthusiasm for his work, he was entitled to an A in clinic. An issue with both students was how much weight faculty should give client stories in evaluating the student's progress.¹⁷⁷

C. *The Effect On Faculty Learning And Pedagogy*

It is not surprising that storytelling had much of the same value for faculty as it did for students: a way to organize ideas and share information.¹⁷⁸ Beyond helping faculty clarify what they were thinking and how they were approaching particular students and cases, listening to student stories proved to be an efficient way to better understand the students and their cases.¹⁷⁹ While students probably reserve their most candid critique of their clinical experience for conversations with their friends, faculty supervisors found it instructive to learn, for example, that students were still smarting from a judge's remarks or a client's disdain and were not as thoroughly debriefed as might have been imagined. For example, when two students and their client emerged from a Social Security hearing where the judge treated both the client and the students harshly, one of the students began to express her outrage, just steps from the hearing room. The supervising attorney admonished her to wait until they were outside the building to talk about the case. In the meeting after the hearing, the supervisor had engaged the student in what she imagined was a thoughtful discussion of the role of the attorney's emotions in representation. How-

¹⁷⁶ *Id.*

¹⁷⁷ Cahn, *supra* note 149, at 2481 (exploring the general question of how much weight to give the stories we hear, "[o]nce we 'let a thousand powerful stories be told,' are we then stuck with accepting and validating all of them? How can we choose the story or stories on which we will take action? Simply saying that narratives open us up to understanding others is just the first step; there may be a need to judge and choose between inconsistent narratives. For those of us looking for grounding—even provisional, contingent grounding—we want to engage in something more than listening to, understanding, and encouraging narratives. Thus, using narratives to gain a more complete understanding need not mean that judgment must be suspended, although such judgment will be better informed. In searching for ways of thinking about narratives, it is not only important to respect the stories, but also to continue to take action.").

¹⁷⁸ Kanner & Nagy, *supra* note 1, at 12 ("In one sense, stories are nothing more than one way to organize facts for ourselves and to impart information to others. Stories are how we teach, explain, and entertain.").

¹⁷⁹ Dinerstein, *supra* note 80, at 712. In writing about student perceptions of clinical programs, Dinerstein said, "[W]hile these observations sometimes may be painful, they are nevertheless important for us to consider."

ever, in recounting this story, the students said,

It was such an awful experience It was unreal. I think that when I came back to school, after that for probably two hours, I was shaking still. It was that bad. And then I also got in trouble because we were like two steps outside the door and I started going off about "oh, that was unbelievable, that judge."¹⁸⁰

The student's story of the hearing contrasted sharply with the faculty member's:¹⁸¹

[The student] really held her own. The judge hijacked her direct examination. He asked the witness 80 percent of the questions that she had planned to ask, but the ones that he missed, she just moved back and picked them up one at a time. Extremely self-possessed, and she just nipped through them one after another. No hesitation, no disfluency, very professional.¹⁸²

Listening to the student stories allows the faculty supervisor to have new insights into the student.¹⁸³ Describing a student who had immigrated to the United States as a child, the faculty member said, "In watching her tell her story, I was struck by how hard she works to assimilate. She is working so hard to fit in and while this occasionally misfires, I really appreciate how hard she works, how much energy it takes to do that."¹⁸⁴

Clinical faculty (particularly those who conduct weekly supervisory meetings) listen to students all the time,¹⁸⁵ but listening to recorded student stories that have been told outside the presence of the faculty supervisor engenders a whole new kind of listening. If the supervisor is not in the room, there can be no subtle manipulation of the student to tell the right story, and the supervisor cannot inadvertently

¹⁸⁰ Transcript of recorded story (on file with authors).

¹⁸¹ Faculty stories were recorded before the faculty member reviewed the student stories. The sequence is important to avoid having the faculty story influenced by the student story.

¹⁸² Transcript of recorded interview (on file with authors).

¹⁸³ This process of listening to student stories and comparing them to faculty stories of the same case inevitably leads to different perceptions and different conclusions. Indeed, the process would be much less valuable if it simply confirmed that students and instructors shared the same view. What one does in a large measure depends on what one hears—if it is a simple mistake of fact—that the retainer agreement cannot be amended to include work on another legal matter—then it presents an opportunity to give the student that information and make changes. Contrast that to learning that a student feels transformed by work on the case, and the supervising attorney was only vaguely aware of a shift in the student's self-image.

¹⁸⁴ Transcript of recorded interview (on file with authors).

¹⁸⁵ Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 110 (1993-94). ("As clinical education matured, clinical teachers developed other methodologies to supplement supervision. Simulations, case rounds or case meetings, and classroom lectures and discussions became common in the repertoire of clinical teachers.").

shape the story with a small frown or a disapproving glance at the student.¹⁸⁶ For example, the student described in the following story might have sensed his supervisor's disapproval and told a different story if the supervisor had been present during the telling:

Not once, not twice, but three times he came up with these cock-amamie legal theories that were totally off base [while telling his story]. If he had been correct about any of them, it would have totally altered the course of the case. And two out of three he had never mentioned in our meetings. And yet he just kind of presents this as though it's all a reasonable alternative that's under consideration. I was struck by, you know, kind of what a loose cannon he was. And I had that sense before, but in the course of [listening to the student tell his story] it was like, whoa, he really is a loose cannon. This really helped me with the last thing we did because I had some very concrete examples. And I was able to say to the student, "You know, eventually your knowledge of the law is going to catch up to what you have an impulse to say to people. But until it does, you have to really censor yourself."¹⁸⁷

Because the supervisor was out of the room when the student told the story, there was no opportunity to interrupt, to redirect, or to influence the student tell the "right" story. As a result, the student told the story and the supervisor heard the story in a way that would not have been possible if she had been present. In supervisory meetings, there are many tasks to accomplish, such as helping the student figure out what to do next, what research to conduct, how to interact with the client, and how to solve problems, evaluating the student's performance based on the information that they are giving, and emphasizing deadlines.¹⁸⁸ It is rare that faculty supervisors can just simply listen, even for as little as five minutes, to what a student is saying about the experience of having a client.¹⁸⁹ "The process of listening to student stories, outside their presence, with no obligation to frame a response, was useful. It allowed me to really listen to what they were saying uncoupled from the impulse to make sure they learn something from it."¹⁹⁰ The knowledge gleaned from listening to student stories

¹⁸⁶ *Id.* at 155 ("[T]eachers must constantly be attentive to how they may be overpowering or subverting students' attempts to understand experience.").

¹⁸⁷ Transcript of recorded interview (on file with authors).

¹⁸⁸ Shalleck, *supra* note 185, at 152 ("Because supervision involves ongoing decisions about when and how to intervene in the students' experience, the teacher must constantly assess the effects of this intervention on the students' interpretation and understanding of their experiences.").

¹⁸⁹ Meyer, *supra* note 39, at 569 ("[W]hen we are still, when we learn to silence our premature analytic judgments and listen, really listen, to the power of stories, we will learn something quite profound about ourselves and the world in which we live and practice.").

¹⁹⁰ Transcript of recorded interview (on file with authors).

was useful to supervisors. As one faculty supervisor observed,

This has been one of the most valuable outcomes of this project—hearing the student stories—which necessarily are different from my [stories], whether because they are exposed to different facets of the case and they know things about the client I don't, whether it is because the role of the advocate is new to them, whether it is because they have not yet developed that protective layer that separates themselves from their clients, their stories are really different. It is impossible to listen to student stories and not learn something¹⁹¹

Comparing student and faculty stories also offered supervising faculty the opportunity to reflect on and improve their supervision of students. One faculty member reconsidered the amount of time she spent with each student team: “I wondered if I’m giving short shrift to the more accomplished students. In a sense, I might be rushing them a little bit because they are so competent. Clearly the students who are struggling demand more of my time, but I wonder if there is a better balance.”¹⁹²

The faculty storytelling sessions used the same protocol of appreciative feedback as the student storytelling sessions. The importance of an attentive, nonjudgmental listener cannot be overstated.¹⁹³ The formal process of telling stories to other colleagues was at times unsettling: “I felt self-conscious about describing what, in some cases, seemed like lapses in either my judgment or my attention to the cases or students.”¹⁹⁴ It is important that colleagues not treat faculty stories as an opportunity to critique another faculty member’s handling of a case or student. While that may be a standard faculty rounds model, where people solicit that kind of feedback, the risk in doing so is that it will inhibit the process of just telling the story as it is perceived and comparing that story to the student’s story. Those who are inclined to use this model in a faculty rounds setting should also consider the value of keeping it as a process discrete from problem solving. As with students, it may be difficult to get faculty to listen to their colleagues’ stories without offering “helpful” advice, but constructive or challenging feedback may subvert the process and inhibit faculty members’ ability to tell their story. As this project demonstrated, there is inher-

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *The Art of Storytelling*, *supra* note 115, at 511-12. As Steven Hobbs said in a panel discussion on the art of storytelling, “[T]his experience in storytelling has taught me a lot about listening, because you listen for the story, and that’s the other half of telling. I can’t tell a story unless there is someone there to listen, and as a person who wants to tell stories, I want to listen”

¹⁹⁴ Transcript of recorded interview (on file with authors).

ent value to telling a story; just the process of organizing information, figuring out what one really thinks about something, telling it to other people, and having them listen attentively has value in and of itself, but that value can be somewhat distorted if there is too much feedback of a certain type that tries to challenge the story.

VI. IMPLICATIONS FOR CLINICAL EDUCATION AND RECOMMENDATIONS FOR FUTURE RESEARCH

A. *Implications For Clinical Education*

There is growing interest in applied storytelling, storytelling that goes beyond fairytales at bedtime and performance of folktales and personal narrative.¹⁹⁵ In particular, the research on applied storytelling described in Part I of this article has helped to inform the practice and process of storytelling and pedagogical and andragogical approaches in the legal clinic where this research was conducted, and to provide insight into its value. The results of this project suggest an increase in the degree to which participants in the clinical legal education program internalized and made meaning from their clinical experience in ways that can matter upon entry into practice.¹⁹⁶ This result has implications not only for the overall learning experience of the student and for the teaching experience of the faculty, but for the clients who will encounter the new professionals after graduation.

The opportunity to apply prior theoretical learning to problem solving with real clients is a valuable attribute of the clinical experience. Bloom's taxonomy, however, suggests there is an opportunity to leverage application into even higher orders of cognition: synthesis where students internalize learning and evaluation where students attain insights that go beyond clinical experience into ways of being in practice.¹⁹⁷ Evidence indicates that a facilitated storytelling process can play a role in moving students upward through the taxonomy to these levels. Some fundamental practices discussed here can contribute significantly to the success of the process.

Making the storytelling process transparent and systematic helps to increase student understanding of its relevance to the practice of law. In this project, a seminar that examined the theory of the case through the lens of storytelling helped to legitimize storytelling as an element of legal practice. Practice via role-playing on a case with which students were already familiar readied students for engaging in

¹⁹⁵ See JOSEPH D. SOBOL, *THE STORYTELLERS' JOURNEY* (1999) (providing an in-depth study of the twentieth-century revival of storytelling in America).

¹⁹⁶ See EDUCATING LAWYERS, *supra* note 14.

¹⁹⁷ See BLOOM, *supra* note 18.

storytelling with their peers on actual cases on which they were working.¹⁹⁸ Providing students with prompts for structuring their story a week before the peer-to-peer storytelling session supported the reflective process of synthesizing their experience with information from the client. While not all students took advantage of this advance work, for those who did, it appeared to enhance the value of the process. This suggests that students might benefit from the more systematic inclusion of storytelling in the legal curriculum.¹⁹⁹

The use of appreciative feedback enhances students' ability to refine elements of their story and their delivery style. The law school culture tends to be skewed toward constructive feedback aimed at addressing deficits in student work, rather than an appreciative approach that aims to reinforce the strongest elements of student work. This departure from the traditional focus on deficit critique initially confused and frustrated some students who yearned for specific counsel on how to "fix what's broken" in their work. The authors found that the introduction of a recording of a student telling the story of his experiences with cycles of telling and positive feedback shifted the students' perspective. Students became receptive to the idea that positive feedback holds value, and increased their skills in both integrating positive feedback to improve their own storytelling and giving appreciative feedback to their peers. For those students who still desire feedback that focuses on "what's wrong," a balanced approach that includes deficit style feedback may increase students' ability to integrate positive feedback.

The faculty process of comparing their own stories of the student-client relationships with those of students who are in those relationships prompts faculty to question their assumptions about their students. This resulted in some candid conversations with students that might not have otherwise occurred, and almost certainly would not have occurred in the same way in the absence of faculty review of student stories. Faculty reflection on the gap between students' stories and their own resulted in experimentation with pedagogical ap-

¹⁹⁸ Blume, Johnson, & Paavola, *supra* note 117, at 1088. The ability to tell a compelling, credible story about a case is an important practice skill: "In one of the most extensive studies on jury decision making, Lance Bennett and Martha Feldman found that jurors judged disputed versions in criminal trials by reducing them to story format because the story is their most common everyday communicational form. Stories provide useful structures: plot, characters, time frames, motives, and settings, which help jurors process and understand what is otherwise complex and sometimes unfamiliar information."

¹⁹⁹ Levit, *supra* note 20, at 260. The need for regular practice in storytelling is analogous to the need for regular practice in writing. As Levit observed, "[w]riting 'must be practiced and reinforced throughout the curriculum.' These propositions are supported by the work of legal writing theorists, who have long observed that students need multiple opportunities outside the confines of legal research and writing courses to practice their skills."

proaches having the potential to vitalize teaching and student-faculty relationships in new ways. Telling a story about a student provided an occasion to think systematically and deeply about students and their cases outside the formal evaluation process. Telling the story of each student team allowed the faculty member to frame the story, select persuasive details, and tell the story in a way that listeners could understand. It is not surprising, against this backdrop of reflection, that storytelling enhanced the faculty member's understanding of the case and students. It is not often that faculty and students engage in the same type of intellectual activity concurrently. Clinical law professors devote considerable energy to helping students become reflective practitioners; telling the story of work on their case provides a unique opportunity for faculty to reflect. It is not surprising that faculty enjoyed some of the same benefits as students by simply telling a story.²⁰⁰

The most disappointing aspect of the project was the conclusion that including client stories is problematic. As much as the authors anticipated value from being able to triangulate experiences of students, faculty, and clients, this did not happen. Client stories were problematic because of issues of anonymity and confidentiality, addressed in peer-to-peer telling by the use of pseudonyms and altering or eliminating personal details. Client stories also proved difficult to collect. It seemed improper to collect stories from clients with ongoing cases. Clients whose cases were closed often lost contact with the clinic. In cases that were fully resolved, clients seemed reluctant to critically analyze the process, relying on generalities rather than describing their experiences in detail. While this was understandable, it meant that the opportunity to investigate the influence of client stories on both student learning and the pedagogical approaches was lost. Despite the difficulty, there is value in providing students and faculty with clearer insight into the ways in which clients experience their relationship with their student-attorneys, faculty, and the clinic. Perhaps, with thoughtfulness and creativity, other efforts can overcome the obstacles to gathering these stories.

B. Recommendations For Future Research

This project raises a number of questions worthy of further research. The project only begins to deepen understanding of the power of stories as a social phenomenon in practical settings in higher educa-

²⁰⁰ Kwall, *supra* note 41 ("People are best able to synthesize information and make informed decisions when they have a context to provide a framework for their thought processes. Stories, to the extent they provide this context, are a particularly valuable form of information transmission.").

tion, and only begins to enhance understanding of how storytelling practices from other organizations can be adapted and successfully applied to higher education settings.²⁰¹ While the project has clear implications for faculty and their students in the particular legal clinic where it took place, its applicability to other legal clinics is still open to investigation. We encourage other interested clinics to replicate a version of the action research outlined here, customized to meet their own particular circumstances, and to write about the process and outcomes. Customized versions of this model might also be applied in other clinical settings in higher education, such as student teaching, nursing, physical therapy, and business school internships.

The authors would also like to see researchers examine the effect of more solidly incorporating storytelling into the curriculum prior to the clinic.²⁰² This would provide the benefits of storytelling and listening skills to students who do not participate in a clinic, and could enhance the value of the storytelling to those students who do.

The surprise finding of the apparent relationship between storytelling and identity formation is worthy of additional investigation. If storytelling and listening can contribute to shaping student-attorneys' identities, this may have implications for storytelling by faculty or by guest speakers at other points in the legal curriculum.

Finally, we find the potential of positive feedback on students participating in the clinic intriguing. This break from the classic mode of deficit-based feedback seems potent if only for the reason that it has a "foreign" feel to students and causes them to process feedback in a way that inverts the usual approach. We feel strongly that its power extends beyond storytelling, however, and encourage clinical faculty to join us in more systematically investigating the ways in which an appreciative focus on student work will affect their progress in clinical settings, from application through synthesis to evaluation and meaning making.

²⁰¹ See, Richard J. Torraco & Richard E. Hoover, *Organization Development and Change in Universities: Implications for Research and Practice*, 7 (3) *ADVANCES DEV. HUM. RESOURCES* 422 (2005). This work underscores the value of using organizational development theory in higher education.

²⁰² Miller, *supra* note 121, at 524. ("It could be argued that training lawyers to tell their story of their experience of the case puts the emphasis in the wrong place—the lawyer's not the client's story. But remember, students are new to the process of story telling of any sort. As a methodology for approaching the law, it has historically been disfavored in doctrinal classes where court of appeals cases are largely stripped of their story.").

APPENDIX 1

Student Interview Protocol

Thank you for agreeing to participate in this interview. The information you provide will contribute to our understanding of the role that stories and storytelling can play in enhancing the experience and deepening the learning of students participating in the legal clinic. I assure you that all the information you convey in this interview will remain anonymous and will be used solely for research and educational purposes. To increase the accuracy of my understanding, and with your permission, I will be audio-taping this interview. Is that alright?

The interview will take approximately twenty minutes depending on your responses. It is in two parts. In the first part, I will be asking you to reflect on your experience telling the story of your interactions with your client to date. In the second part, I will be asking you to reflect on your experience listening to your colleagues tell their story. Do you have any questions before we begin?

Part 1 – As a Teller

1. How did it feel to tell your story? (Was it difficult, easy, boring, fun etc?)
2. Did you learn anything in the process of telling your story? (Did you realize anything new or have any insights while you were telling it? If so, can you share them with me?)
3. Was telling your story helpful to you in any other way? If so, how? If not, can you speculate on why not?
4. In what ways might we have improved your experience as a storyteller? (Would you have benefited from having a suggested structure for your story or a set of questions or prompts that would help you to shape it?)
5. When you come back to tell the rest of your story in April, will you do anything different, or prepare in any way?
6. In what ways, if any, did the dialogue following your own story help you? (Did you learn anything new or get any new insights? If so, what were they?)
7. Can you think of any other ways to make that dialogue more helpful? (What else would you have liked as part of that dialogue?)
8. Will you do anything different in your upcoming work with your client on the basis of telling your story and participating in the dialogue that followed? If so, what?

Part 2 – As a Listener

1. How did it feel to listen to the stories of your colleagues? (Was it difficult, easy, boring, fun etc?)
2. Did you learn anything in the process of listening to your colleagues' stories? (Did you realize anything new or have any insights while you were listening to them? If so, can you share them with me?)
3. Was listening to their stories helpful to you in any other ways? If so, how? If not, can you speculate on why not?
4. In what ways might your experience as a listener be improved? (How could we help you to get more benefit from listening?)
5. In what ways, if any, was the dialogue that followed each of your colleagues' stories helpful?
6. Can you think of any other ways to make that dialogue more helpful? (What else would you have liked as part of that dialogue?)
7. Will you do anything different in your upcoming work as a student attorney on the basis of listening to your colleagues' stories?

APPENDIX 2

Client Interview Protocol

Thank you for agreeing to take part in this interview. The information you share with me will contribute to a deeper understanding of the process of clinical legal education. I assure you that all of the information you provide in this interview will remain anonymous and that no records of this interview will include your name. In the interest of confidentiality, all names you choose to use in the interview will be changed by the researcher during transcription, even if you choose to use pseudonyms. If you have no objections, I will be recording this interview for the sake of accuracy. The tape will be used for educational and research purposes only. Is that alright?

Thank you.

1. Please tell me a little bit about the case you've been working on with the students at the clinic. What problem were you trying to solve?
2. Think back over your experiences with your student attorneys. Please describe the most positive experience – one you felt good about – that you had when you were working with them this semester. Tell me that story, and include as much detail as you can about what happened. Specifically I'd like you to talk about what the attorneys did that was helpful or positive and why the experience was a good one for you.
3. Now please describe the most difficult or challenging experience you had when you were working with your attorneys from the clinic. This might be an experience that was confusing to you, a time when you were disappointed or frustrated in the process – even if, eventually, the ending was happy one. Again, as you tell me about this experience that you did not find enjoyable or easy, please include as much detail as you can about what happened. Specifically I'd like you to tell me what the attorneys did that made the situation difficult, and what you would have liked them to do instead.

Thank you very much for your time and for sharing your story with me. The information you have shared will help the students to learn more about being a lawyer, and will help us to improve the services we provide here at the clinic.

APPENDIX 3

Teller Guide

As you craft your story based on what you know so far about your case, consider the following questions:

- What do you currently believe is the Most Important Thing?
- What might be a good starting point of your story (and why did you choose to try to start there)?
- What key details have you included that will make the story feel both authentic and relevant to the listeners?
- If there are points about the client and the client story that you are concerned will be lost, ignored, or misunderstood by your listeners, how have you enriched the narrative connected to those points to increase the emphasis?

As you tell your story, you may find the following points helpful in providing some structure:

- What is the nature of your case?
- When you first got the case file, how did you feel about it?
- When you first met the client, what were your first impressions?
- Did meeting the client make you feel any differently about the case?
- Tell us how the case unfolded over the course of this semester.
- What about it interested you the most?
- What aspects of it were most clear to you? What seemed easy and straightforward, and why?
- What about it challenged you the most? What felt difficult and why?
- What assistance or support did you receive from others (students, faculty, etc.)?
- How did that support influence the case, or how you felt about the case?
- How has the case evolved/resolved at this point?
- How do you feel about where it is now, and how you will leave it?
- What do you wish you could have done more of, or done differently with/for this client?
- What about your work on this case makes you proud?

Once you've told your story:

- What feedback do you want from your listeners?
- What additional information do you require to flesh out your story?

